



24 CFR Parts 50, 55, 58, and 200

[Docket No. FR-6272-P-01]

RIN 2506-AC54

Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise HUD’s regulations governing floodplain management and the protection of wetlands to implement the Federal Flood Risk Management Standard (FFRMS), in accordance with the Executive order, “Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input,” to improve the resilience of HUD-assisted or financed projects to the effects of climate change and natural disasters, and provide for greater flexibility in the use of HUD assistance in floodways under certain circumstances. Among other revisions, the rule would provide a process for determining the FFRMS Floodplain that would establish a preference for the climate-informed science approach (CISA), and it would revise HUD’s floodplain and wetland regulations to streamline them, improve overall clarity, and modernize standards. This proposed rule would also revise HUD’s Minimum Property Standards for one-to-four unit housing under HUD mortgage insurance and under low-rent public housing programs to require that the lowest floor in both newly constructed and substantially improved structures located within the 1-percent-annual-chance (100-year) floodplain be built at least 2 feet above the base flood elevation as determined by best available information, and it would revise a categorical exclusion when HUD performs environmental reviews, and update various HUD environmental regulations to permit online posting of public notices.

DATES: Comment Due Date: May 23, 2023.

ADDRESSES: Interested persons are invited to submit public comments regarding this proposed rule using one of the two methods for submitting public comments described below. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit

<https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Kristin L. Fontenot, Director, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7282, Washington, DC 20410-8000. For inquiry by phone or email, contact Lauren Hayes Knutson, Director, Environmental Planning Division, Office of Environment and Energy, Office of Community Planning and Development, at 202-402-4270 (this is not a toll-free number), or email to:

Lauren.E.Hayes@hud.gov. For questions regarding the Minimum Property Standards, contact Kevin Stevens, Acting Director, Office of Single Family Program Development, 202-402-4317.

HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit

<https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION:

I. Background

In the past decade alone, there were over 1,100 direct flood fatalities in the United States.¹ With climate change and associated sea-level rise, flooding risks have increased over time, and are anticipated to continue increasing. The Fourth National Climate Assessment (2018), for example, projects that tide flooding will become more disruptive and costlier in the coming decades. Observed increases in the frequency and intensity of heavy precipitation events in most parts of the United States are projected to continue, with increased Atlantic and eastern North Pacific hurricane rainfall and intensity and increasing frequency and severity of landfalling “atmospheric rivers” on the West Coast.² Severe flooding can cause significant damage to

¹ <https://www.weather.gov/arx/usflood>

² The Fourth National Climate Assessment is available at https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf

infrastructure, including buildings, roads, ports, industrial facilities, and even coastal military installations. Since 1980, the U.S. has sustained 323 weather and climate disasters where the overall damage costs reached or exceeded \$1 billion, with total costs exceeding \$2.195 trillion³. It is therefore necessary to take action to responsibly use Federal funds, and HUD must ensure it makes Federal investments wisely to minimize losses, particularly following repeated flooding events.

In response to the threats that increasing flood risks pose to life and taxpayer funded property, on January 30, 2015, President Obama signed Executive Order (E.O.) 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input. Significantly, E.O. 13690 amended E.O. 11988, Floodplain Management, issued in 1977⁴ by, among other things, revising Section 6(c) of E.O. 11988 to provide new approaches to establish the floodplain. E.O. 13690 provided, however, that prior to any actions implementing E.O. 13690, additional input from stakeholders be solicited and considered. Consistent with this direction, the Federal Emergency Management Agency (FEMA), as Chair of the Mitigation Framework Leadership Group (MitFLG⁵), published a notice in the *Federal Register* seeking comment on the proposed “Revised Guidelines for Implementing Executive Order 11988, Floodplain Management” to provide guidance to agencies on the implementation of E.O. 13690 and 11988 (80 FR 6530, February 5, 2015). On March 26, 2015 (80 FR 16018), FEMA on behalf of MitFLG published a notice in the *Federal Register* extending the public comment period for 30 days until May 6, 2015. MitFLG held 9 public listening sessions across the country that were attended by over 700 participants from State and

³ <https://www.ncei.noaa.gov/access/billions/>

⁴ E.O. 13690 was published in the *Federal Register* on February 4, 2015 (80 FR 6425). Throughout this document, references to E.O. 11988 as amended by E.O. 13690 will be referred to as “E.O. 11988, as amended.” References to E.O. 11988 as published in 1977 will simply be referred to as “E.O. 11988.”

⁵ The Mitigation Framework Leadership Group (MitFLG) is a senior level group formed in 2013 to coordinate mitigation efforts across the Federal Government and to assess the effectiveness of mitigation capabilities as they are developed and deployed across the Nation. The MitFLG includes relevant local, state, tribal, and Federal organizations. The balance of non-Federal members ensures appropriate integration of Federal efforts across the whole community. More information about MitFLG can be found at <https://www.fema.gov/emergency-managers/national-preparedness/frameworks/mitigation/mitflg>.

local governments and other stakeholder organizations to discuss the Guidelines.⁶ MitFLG considered stakeholder input and provided recommendations to the U.S. Water Resources Council (WRC).⁷

On October 8, 2015, the WRC issued updated “Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input” (Guidelines).⁸ The Guidelines state that although the Guidelines describe various approaches for determining the higher vertical flood elevation and corresponding horizontal floodplain for federally funded projects, they are not meant to be an elevation standard, but rather a resilience standard. However, the Guidelines provide that all future actions where Federal funds are used for new construction, substantial improvement⁹, or to address substantial damage¹⁰ meet the level of resilience established by the Guidelines. In implementing the Guidelines and establishing the Federal Flood Risk Management Standard (FFRMS), Federal agencies were to select among the following three approaches for establishing the flood elevation and hazard area in siting, design, and construction:

⁶ Specific information on the listening sessions can be found in the notices on the docket at <https://www.regulations.gov/docket/FEMA-2015-0006/document?documentTypes=Notice>. Transcripts of those sessions are available on the docket at <https://www.regulations.gov/docket/FEMA-2015-0006/document?documentTypes=Supporting%20%26%20Related%20Material>.

⁷ The U.S. Water Resources Council (WRC) is a statutory body tasked to maintain a continuing study and prepare an assessment of the adequacy of supplies of water necessary to meet the water requirements in each water resource region in the United States and the national interest therein. 42 U.S.C. 1962a. The WRC is a means for the coordination of the water and related land resources policies and programs of several Federal agencies. The WRC is composed of the Secretary of the Interior, the Secretary of Agriculture, the Secretary of the Army, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Administrator of the Environmental Protection Agency, and the Secretary of Energy.

⁸ Available at: https://www.fema.gov/sites/default/files/documents/fema_implementing-guidelines-EO11988-13690_10082015.pdf. HUD notes that the WRC is not currently active.

⁹ HUD currently defines substantial improvement in 24 CFR 55.2(b). This proposed rule would not change this definition except by moving it from its current location in § 55.2(b)(10) to proposed § 55.2(b)(12) to reflect other changes to that section.

¹⁰ Substantial damage is defined in FEMA regulations at 44 CFR 59.1 as “damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.” For more information on substantial improvement and substantial damage, see https://www.fema.gov/sites/default/files/2020-08/fema_p_758_complete_r3_0.pdf.

- Climate-Informed Science Approach (CISA): The elevation and flood hazard area that result from using a climate-informed science approach that uses the best-available, actionable hydrologic and hydraulic data,
- Freeboard¹¹ Value Approach (FVA): The elevation and flood hazard area that result from using the freeboard value, reached by adding an additional 2 feet to the base flood elevation (the 100-year, or 1-percent-annual-chance flood elevation) for non-critical actions and by adding an additional 3 feet to the base flood elevation for critical actions, or
- 0.2-Percent-Annual-Chance (500-Year) Flood Approach: The elevation and flood hazard area that result from using the 0.2-percent-annual-chance flood approach (500-year flood elevation).

The FVA and 0.2-percent-annual-chance flood approach result in higher elevations than regulating to base flood elevation with correspondingly larger horizontal floodplain areas. CISA will generally have a similar result, with the exception that agencies using CISA may find the resulting elevation to be equal to or lower than the current elevation in some areas due to the nature of the specific climate change processes and physical factors affecting flood risk at the project site. However, as a matter of policy established in the Guidelines, CISA can only be used if the resulting flood elevation is equal to or higher than current base flood elevation.

E.O. 11988, issued May 24, 1977 (published in the *Federal Register* on May 25, 1977, at 42 FR 26951), directs Federal agencies to avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. Floodplains are found both in coastal flood areas, where rising tides and storm surge are often

¹¹ Freeboard is defined by FEMA as “a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. ‘Freeboard’ tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.” See 44 CFR 59.1. See also <http://www.fema.gov/freeboard>.

responsible for flooding, and in riverine flood areas where moving water bodies may overrun their banks due to heavy rains or snow melt. E.O. 11988 recommended the use of FEMA floodplain maps to identify the floodplain area. Because flood risk can change over time, FEMA continually revises Flood Insurance Rate Maps (FIRMs), advisory base flood elevations, and preliminary floodplain maps and studies to incorporate new information and reflect current understanding of flood risk.

Prior to E.O. 13690, a floodplain for E.O. 11988 purposes referred to the lowland and relatively flat areas adjoining inland and coastal waters including flood-prone areas of offshore islands, including at a minimum that area subject to a one percent or greater chance of flooding in any given year (referred to as the “1-percent-annual-chance flood,” “100-year” flood or “base flood”). E.O. 13690 amended E.O. 11988 to direct agencies to update the original E.O. 11988 floodplain using one (or a combination) of the three approaches listed above, which are incorporated in the FFRMS.

To move towards implementing E.O. 13690, HUD published a proposed rule on October 28, 2016, titled “Floodplain Management and Protection of Wetlands; Minimum Property Standards for Flood Hazard Exposure; Building to the Federal Flood Risk Management Standard” (81 FR 74967). E.O. 13690 was revoked by E.O. 13807 of August 15, 2017 (Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects), and HUD subsequently withdrew the proposed rule from its Unified Agenda of Regulatory and Deregulatory Actions on December 22, 2017 (82 FR 60693). E.O. 13690 was reinstated by E.O. 14030 of May 20, 2021 (Climate-Related Financial Risk), published at 86 FR 27967.

Thousands of communities across the country have already strengthened their local floodplain management codes and standards to ensure that buildings and infrastructure are resilient to flood risk. By implementing the FFRMS, HUD’s standards will better align with these actions. At the same time, HUD recognizes that the need to make structures resilient also

requires a flexible approach to adapt to the needs of the Federal agency, local community, and the circumstances surrounding each project or action.

II. Existing HUD Standards and the 2016 Proposed Rule

Consistent with E.O. 11988, when no practicable alternative exists to development in flood-prone areas, HUD requires the design or modification of the proposed action to minimize potential adverse impact to and from flooding. HUD has used and continues to use the term “adverse impacts” synonymously with the term “harm” throughout its regulations in part 55. HUD has implemented E.O. 11988 and its 8-step decisionmaking process through regulations at 24 CFR part 55. The 8-step decisionmaking process is the compliance process for activities occurring in the floodplain and includes a public notice requirement, examination of practicable alternatives, evaluation of potential impacts, and modifications to minimize adverse impacts. HUD requires implementation of the 8-step process by HUD staff or responsible entities (States, Indian Tribes, or units of general local government) for activities occurring in the floodplain such as new construction of infrastructure or substantial improvement of buildings and hospitals. HUD requires that HUD-assisted or financed construction and improvements (including mortgage insurance actions) undergo the 8-step process unless they are subject to an exception or categorical exclusion under 24 CFR 50.19, 24 CFR 55.12, 24 CFR 58.34, or 24 CFR 58.35(b). For example, the 8-step process in § 55.20 does not apply to HUD’s insurance of one- to four-family mortgages under the Lender Insurance program, where HUD does not review or approve the mortgage insurance before completion of construction or rehabilitation and the loan closing, since such mortgage insurance is subject to a categorical exclusion under 24 CFR 50.19(b)(17).

While the 8-step process may not apply to these activities, HUD’s current Minimum Property Standards at 24 CFR 200.926d require that single-family housing newly constructed under HUD mortgage insurance and specific low-rent public housing programs have its lowest floor at or above the base flood elevation.

In the wake of recovery from the devastating effects of Hurricane Sandy and other flood disasters, HUD's 2016 proposed rule on floodplain management and the protection of wetlands was written with the intention of ensuring that structures located in flood-prone areas are built or rebuilt stronger, safer, and less vulnerable to future flooding events. At that time, HUD proposed standards that would have been consistent with FVA as described above for HUD assisted or financed actions. Structures involving new construction and substantial improvements and subject to 24 CFR Part 55 would have had to have been elevated (for non-critical actions) at least 2 feet above the base flood elevation, or (for critical actions) the greater of the 0.2-percent-annual-chance floodplain or 3 feet above the base flood elevation using best available information.¹² For new or substantially improved non-residential structures in the FFRMS floodplain that are not critical actions, HUD proposed that the structure either be elevated to the same level as residential structures, or, alternatively, be designed and constructed such that the structure is floodproofed to at least 2 feet above the base flood elevation. The 2016 proposed rule also would have revised HUD's Minimum Property Standards for one-to-four-unit housing under HUD mortgage insurance and low-rent public housing programs to require that both newly constructed and substantially improved structures located within the 1-percent-annual-chance floodplain be built with the lowest floor at least 2 feet above base flood elevation based on best available information.

In 2016, HUD chose FVA over CISA and the 0.2-percent-annual-chance flood approach because it could be applied consistently to any area participating in the National Flood Insurance Program (NFIP), and it could be calculated using existing flood maps.

Although the 2016 proposed rule was never finalized, HUD has implemented program-specific policies to increase resilience to flooding. For example, residential new construction and substantial improvements funded with Community Development Block Grant Disaster

¹² Best available information may be the latest FEMA issued data or guidance, including advisory data (such as Advisory Base Flood Elevations (ABFE)), preliminary Flood Insurance Rate Maps (FIRMs), final FIRMs, or other Federal, State, or local information.

Recovery (CDBG-DR) assistance in the 1-percent-annual-chance floodplain are now required to elevate two feet above base flood elevation.¹³ Similarly, HUD's Office of Multifamily Housing (MF) recently updated its Multifamily Accelerated Processing (MAP) Guide standards for FHA multifamily projects to require new construction projects in 1-percent-annual-chance floodplains to elevate two feet above base flood elevation.¹⁴ The Office of Multifamily Housing has extended the same limitations that apply in coastal high hazard areas (V Zones) to all areas within the Limit of Moderate Wave Action (LiMWA) for new construction and substantial rehabilitation, with lesser but still significant limitations on existing properties.¹⁵

III. This Proposed Rule

In its 2021 Climate Action Plan,¹⁶ HUD committed to completing rulemaking to update 24 CFR part 55 of its regulations and implement FFRMS as a key component of its plan to increase climate resilience and climate justice across the Department, noting that low-income families and communities of color are disproportionately impacted by climate change.¹⁷ Development of equitable strategies to protect low- to moderate-income persons and businesses serving these communities is at the core of HUD's mission to create strong, sustainable, inclusive communities. As stated in its Climate Action Plan, HUD intends to address existing inequities by maximizing investments in low-income communities, communities of color, and other disadvantaged and historically underserved communities.

HUD notes that affordable housing is increasingly at risk from both extreme weather events and sea-level rise, and that coastal communities are especially at risk. Recent analysis and mapping by independent research organization Climate Central projects that the number of

¹³ See, e.g., FR-6303-N-01, Allocations for Community Development Block Grant Disaster Recovery and Implementation of the CDBG-DR Consolidated Waivers and Alternative Requirements Notice published at 87 FR 6364 (February 3, 2022). This requirement was first implemented for the 2015 class of disaster recovery grantees, see FR-5938-N-01, Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees Notice published at 81 FR 39687 (June 17, 2016).

¹⁴ See Multifamily Accelerated Processing (MAP) Guide Revision March 19, 2021, Page 9-43. Available at: <https://www.hud.gov/sites/dfiles/OCHCO/documents/4430GHSGG.pdf>.

¹⁵ *Id.* p. 9-42.

¹⁶ <https://www.hud.gov/climate>

¹⁷ <https://nca2018.globalchange.gov/>

affordable housing units at risk from flooding in coastal areas will triple by 2050,¹⁸ and a report from the Denali Commission found that 144 Native Alaskan Villages (43 percent of all Alaskan communities) experienced infrastructure damage from erosion, flooding, and permafrost thaw.¹⁹

HUD's experience in the wake of flood disasters is that unless structures in flood-prone areas are properly designed, constructed, and elevated, they may not withstand future severe flooding events. This is exacerbated by climate change and projected increases in hurricane rainfall and intensity as well as other precipitation throughout most of the United States. It is therefore critical that HUD take a forward-looking approach to floodplain management, basing decisions not just on past flooding but on how flood risk is anticipated to grow and change over the anticipated life of a project.

HUD's regulations in 24 CFR part 55 currently rely on FEMA FIRMs, which map the 1-percent-annual-chance (100-year) floodplain based on historic flood data. These maps are critical resources when assessing flood risk, but they are not intended to reflect changes in future flood risk influenced by a changing climate. This rule would expand HUD's floodplain of concern from the 1-percent-annual-chance floodplain to the FFRMS floodplain, designated based on projected future risk, to ensure that HUD projects are designed with a more complete picture of a proposed project site's flood risk over time.

Flood risk projection based on current climate science can help HUD meet the original objectives of E.O. 11988, including avoidance of floodplain impacts and minimization of such impacts where there is no practicable alternative to locating a HUD-assisted activity in proximity to flood sources. Together with the use of natural systems, ecosystem processes, and nature-

¹⁸ Maya K. Buchanan et al. (2020). Environ. Res. Lett., 15, 124020.

¹⁹ Alaska Division of Geological & Geophysical Surveys. February 23, 2021. *Alaska's Environmentally Threatened Communities*. ArcGIS, <https://storymaps.arcgis.com/stories/2a0d221e55ca48dd8092427b50a98804> (interpreting University of Alaska Fairbanks Institute of Northern Engineering et al., *Statewide Threat Assessment: Identification of Threats from Erosion, Flooding, and Thawing Permafrost in Remote Alaska Communities – Report Prepared for the Denali Commission*, November, 2019, available at <https://www.denali.gov/wp-content/uploads/2019/11/Statewide-Threat-Assessment-Final-Report-20-November-2019.pdf>).

based approaches to preservation of beneficial floodplain function, adequate elevation of structures is a key minimization strategy.

As recognized by MitFLG and directed by the FFRMS and E.O. 13690, requiring structures to be elevated or floodproofed to an additional elevation above the base flood elevation will increase resiliency and reduce loss of life, property damage, and other economic loss, and can also benefit homeowners by reducing flood insurance rates. These higher elevations provide an extra buffer above the base flood elevation based on the best available information to improve the long-term resilience of communities. Additionally, higher elevation standards help account for increased flood risk associated with projected sea level rise, increased rainfall, and other climate risks, which are not considered in current FEMA maps and flood insurance costs. As stated in “Global and Regional Sea Level Rise Scenarios for the United States” (February 2022) by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA)²⁰ scientists are confident that global sea level will rise by between about 1 and 6.555 feet by 2100.²¹ Higher elevation standards will address the lower end of this projection, while also allowing for greater impacts to be addressed as well.

Requiring additional elevation above the base flood elevation may also lead to a net reduction of expected housing costs over time. HUD’s mission is to create strong, sustainable, inclusive communities and quality affordable homes for all. Flood insurance is a key financial tool to manage potential rebuilding costs but can make homes in risky areas less affordable. By elevating additional feet above the base flood elevation, homeowners may benefit from flood insurance premium reductions that will increase long-term affordability.

As previously discussed, in 2016, HUD chose FVA for defining floodplains. Since 2016, the Federal Government has developed and made publicly available additional flood risk hazard information in coastal areas based on climate informed science, including sea-level rise

²⁰ <https://oceanservice.noaa.gov/hazards/sealevelrise/sealevelrise-tech-report-sections.html>.

²¹ See <https://toolkit.climate.gov/topics/coastal/sea-level-rise>.

predictions. Record storms have provided additional data on the flood risk faced by inland areas, and climate mapping efforts have proceeded at the Federal and State level.

HUD has thus reconsidered its policy approach and now prefers the CISA approach because it provides a forward-looking assessment of flood risk based on likely or potential climate change scenarios, regional climate factors, and an advanced scientific understanding of these effects. Therefore, in this proposed rule, the required level of flood resilience for floodplain management decisionmaking, elevation of structures, and floodproofing would be established using CISA for areas where CISA analysis following the Guidelines has been approved by HUD. HUD intends to rely on CISA tools and implementation resources being developed by a subgroup of the White House Flood Resilience Interagency Working Group to implement CISA analysis. Where CISA data is not available to define the FFRMS floodplain, the level of flood resilience would be based on the FEMA-mapped 0.2-percent-annual-chance (500-year) floodplain or a freeboard height above the FEMA-mapped 1-percent-annual-chance floodplain depending on the criticality of the action, based on available data.

Beyond proposing to implement FFRMS floodplain and elevation requirements, HUD is proposing broader changes to modernize and improve 24 CFR part 55 in accordance with the Department's climate adaptation, environmental justice, and equity priorities. These revisions would explicitly recognize HUD's responsibility to consider the environmental justice impact of the Department's actions within the floodplain management and decisionmaking process. To more effectively and efficiently meet HUD's affordable housing and community development mission, the rule would also streamline decisionmaking for activities that mitigate flood risk, avoid wetland losses, or provide co-benefits that directly contribute to HUD's efforts to reduce climate impacts. HUD is also seeking to strengthen the commitment to use nature-based floodplain management approaches where practicable by identifying specific strategies and practices that have proven effective in increasing flood resilience and environmental quality.

HUD notes that just as its existing regulations pertaining to floodplain management and the protection of wetlands must be applied in conjunction with other statutory and regulatory authorities, adherence to these proposed regulatory revisions would not modify any party's responsibilities or obligations under any other Federal laws, including statutes and regulations administered by other Federal agencies.

A. Federal Flood Risk Management Standard (FFRMS) Floodplain

To implement this framework, HUD proposes to define the FFRMS floodplain in a new section 24 CFR 55.7. This section would establish a three-tiered approach to define the FFRMS floodplain, depending on the data and mapping available in the project area.

1. **Climate Informed Science Approach (CISA):** The FFRMS floodplain would be defined as areas designated as having an elevated flood risk during the anticipated life of the project based on CISA, wherever maps developed using CISA are available and have been approved by HUD. The CISA approach for critical actions will generally use the same methodology as the approach for non-critical actions, but selection of climate change scenarios used for future projections should account for the lower tolerance of risk based on the action's criticality. Where part 55 applies²², CISA would be the required methodology to define the FFRMS floodplain if HUD-approved maps are available. When preparing an Environmental Impact Statement (EIS), an analysis of sea level rise and other climate impacts utilizing climate informed science, future projection, and other climate risk tools would be required regardless of whether pre-existing CISA maps are available for reference. Pursuant to the Guidelines, a base flood elevation based on CISA data cannot be used if it is lower than the current FIRM or Flood Insurance Study (FIS). Under this proposed rule, a responsible entity would have the option of using CISA at the project-specific level to define the FFRMS floodplain even where it is

²² All HUD programs, with the exception of programs that are not subject to NEPA (e.g., the FHA single family program subject to the Minimum Property Standards, and the Housing Trust Fund), are subject to Part 55. Certain projects may be exempt from Part 55 based on project activities (see § 55.12 of this proposed rule).

not required, but only where this results in a higher elevation than would be required using the 0.2-percent-annual-chance (500-year) and freeboard value methods.

2. **0.2 Percent-Annual-Chance Flood Approach (500-year Floodplain Approach):** For non-critical actions, where CISA maps or other types of CISA analysis are not available, but FEMA has defined the 0.2-percent-annual-chance floodplain, the FFRMS floodplain would be defined as those areas that FEMA has designated as within the 0.2-percent-annual-chance floodplain, and structures would need to be elevated to or above the 0.2-percent-annual-chance floodplain.

3. **Freeboard Value Approach (FVA):** If neither CISA nor FEMA-mapped 0.2-percent-annual-chance floodplain data is available, for non-critical actions, the FFRMS floodplain would be defined as those areas that result from adding an additional two feet to the base flood elevation as established by the effective FEMA FIRM or FIS or – if available – a FEMA-provided preliminary or pending FIRM or FIS or advisory base flood elevations, whether regulatory or informational in nature. However, an interim or preliminary FEMA map could not be used if it is lower than the current FIRM or FIS.

For critical actions where CISA data is not available, the FFRMS floodplain would be either the area within the 0.2-percent-annual-chance floodplain or the area that results from adding an additional three feet to the base flood elevation, whichever is higher. The larger floodplain and higher elevation would need to be applied where the 0.2-percent-annual-chance floodplain is mapped.

If CISA maps are not available and FEMA FIRMs, FIS, preliminary maps and advisory base flood elevations are unavailable or insufficiently detailed to determine base flood elevation, other Federal, State, local, or Tribal data could be used as “best available information” to define the 1-percent-annual-chance floodplain. For non-critical actions, the FFRMS floodplain would be the area that results from adding an additional two feet to the base flood elevation based on best available information. For critical actions, the FFRMS floodplain would be the greater of

either the 0.2-percent-annual-chance floodplain based on best available information or areas that result from adding an additional three feet to the base flood elevation based on best available information. Where the 0.2-percent-annual-chance floodplain is mapped, the larger floodplain and higher elevation must be applied. When these cases arise, HUD will provide guidance regarding what other Federal, State, local, or Tribal data may be sufficient to be used as “best available information.”

B. Revised Definitions

This proposed rule would revise various definitions in 24 CFR 55.2. The definition of best available information is currently appended to the definition of “coastal high hazard area” (the coastal area subject to high velocity waters from wind and wave hazards, as designated on a FIRM or FIS or in best available information), but applies to coastal high hazard areas, floodplains, and floodways alike. This organizational structure has created confusion for readers and is not compatible with the unique approach to identifying the FFRMS floodplain directed by E.O. 13690. The proposed rule therefore relocates the definition of best available information from within the definition of coastal high hazard area in 24 CFR 55.2 to two new sections, 24 CFR 55.7 and 55.8. It also adjusts the definitions of “0.2-percent-annual-chance (500-year) floodplain,” “floodway,” and “1-percent-annual-chance (100-year) floodplain,” to reflect the new citation.

Sources of best available information for identifying the FFRMS floodplain would be described in 24 CFR 55.7 according to the CISA, 0.2-Percent-Annual-Chance Flood, and FVA methods. Best available information sources for floodways, coastal high hazard areas, and areas within the Limit of Moderate Wave Action (LiMWA) would be identified in 24 CFR 55.8 and include both effective and advisory or preliminary FEMA maps, similar to the current description of best available information within the coastal high hazard area definition.

“Critical action” would be revised to include community stormwater management infrastructure and water treatment plants as examples of utilities or services that could become inoperative during flood and storm events.

A definition of “FFRMS floodplain” would be added and the definition of 0.2-percent-annual-chance floodplain would be updated consistent with the FFRMS approach and to remove the statement that the 0.2-percent-annual-chance floodplain is the minimum area of concern for critical actions, which may not be consistent with HUD’s implementation of FFRMS when CISA analysis is available.

A definition for “impervious surface area” would be added to provide an objective criterion for use in the proposed §§ 55.8(a)(1), 55.12, and 55.14.

HUD also proposes to add a definition for the LiMWA based on FEMA criteria.²³ The LiMWA is the inland limit of the area expected to receive 1.5-foot or greater breaking waves during a 1-percent-annual-chance flood event. The area on the flood map between the coastal high hazard area (Zone V) and the LiMWA is called the Coastal A Zone, and laboratory tests have consistently confirmed that wave heights within the Coastal A Zone can cause significant damage to structures that are not constructed to withstand coastal hazards.²⁴ Consistent with FEMA guidance, this proposed rule would require structures within the Coastal A Zone to be built to Zone V standards.

The definition for new construction would be removed and incorporated into a new § 55.10, “Limitations on HUD assistance in wetlands” with additional context on construction actions.

The definition for “wetlands” would be revised to clarify what is not included (certain ponds or deepwater aquatic habitats), and the part of the definition that describes how wetlands

²³ See: https://www.fema.gov/sites/default/files/documents/fema_using-limit-oderate-wave-action_fact-sheet_5-24-2021.pdf.

²⁴ See: Answers to Questions About the NFIP (page 46), available at <https://agents.floodsmart.gov/sites/default/files/fema-answers-to-questions-about-the-NFIP.pdf>.

are determined would be removed from this section and moved to a new § 55.9, “Identifying wetlands.”

C. Assignment of Responsibilities

HUD proposes to clarify in 24 CFR 55.3 that HUD Assistant Secretaries, the General Counsel, and the President of the Government National Mortgage Association (GNMA) shall take full responsibility for all decisions made under their jurisdictions that are made pursuant to the decisionmaking process in 24 CFR 55.20. The duties of grantees and applicants would be revised for clarity, and a new § 55.3(f) codifying the role of third-party providers would be added.

D. Notification of Floodplain Hazard

This proposed rule would revise HUD’s regulations requiring notification of floodplain hazard. It would move notification requirements from the current 24 CFR 55.21 and conveyance restrictions from the current 24 CFR 55.22 to a new 24 CFR 55.4 to emphasize the importance of providing notice as early in the process as possible. This section would retain the requirement that HUD (or HUD’s designee) or the responsible entity must ensure that any party participating in a financial transaction for a property located in a floodplain and any current or prospective tenant is notified of the hazards of the floodplain location. In addition, the new 24 CFR 55.4 would define notification requirements for property owners, buyers, developers, and renters and identify specific hazards and information that should be included in these notices based on the interests of these parties. Required information for owners, buyers, and developers would include the requirement or option to obtain flood insurance, the approximate elevation of the FFRMS floodplain, proximity of the site to flood-related infrastructure including dams and levees,²⁵ ingress and egress or evacuation routes, disclosure of information on flood insurance claims filed on the property, and other relevant information such as available emergency

²⁵ Proximity to flood control infrastructure can be identified through the U.S. Army Corps of Engineers’ National Levee Database and National Inventory of Dams.

notification resources. For HUD-assisted rental properties where flood insurance is required, new and renewal leases would be required to include acknowledgements signed by residents indicating that they have been advised that the property is in a floodplain and flood insurance is available for their personal property. Renters would also be informed of the location of ingress and egress or evacuation routes, available emergency notification resources, and emergency procedures for residents in the event of flooding. HUD encourages a proactive and systematic approach to notification requirements for floodplain risks to ensure that prospective buyers and renters are made aware of potential flood risk with sufficient warning so that they can make an informed decision considering their level of risk. The conveyance restrictions for the disposition of multifamily real property currently in 24 CFR 55.22 would be moved to a new 24 CFR 55.4 with minimal changes to reflect updated floodplain terminology.

E. Flood Insurance

In the current 24 CFR part 55 regulation, the National Flood Insurance Program (NFIP) is discussed primarily in the context of Flood Disaster Protection Act (FDPA) limitations on HUD program participation for properties in communities not participating in the NFIP or for previously Federally assisted properties where flood insurance is not maintained. Nevertheless, a much more frequently applicable FDPA requirement for HUD-assisted projects is that of the mandatory purchase of flood insurance within the Special Flood Hazard Area (SFHA) as designated by FEMA on the effective FIRM or FIS, and the NFIP plays an important role in minimization measures to reduce flood losses. To address these issues more comprehensively in the context of 24 CFR part 55 decisionmaking, all applicable flood insurance requirements would be consolidated and moved to a new section 55.5.

This section would also include new language clarifying that HUD or the responsible entity may require flood insurance beyond the minimums established in the FDPA or by a state, locality, Tribe, or this part when necessary to minimize financial risk. It also clarifies that mortgagees participating in a HUD assistance or mortgage insurance or guarantee program may

impose additional flood insurance requirements. While nothing in this part requires flood insurance outside of the SFHA, HUD strongly encourages that flood insurance be obtained and maintained for all structures within the FFRMS floodplain to mitigate future financial losses. It may also be appropriate for high-value structures to maintain more flood insurance than is available under the NFIP: as of 2021, the maximum available building coverage through the NFIP is \$250,000 for single-family structures of one-to-four units and \$500,000 for multifamily structures with five or more housing units and commercial structures.²⁶ For example, for FHA multifamily programs, the MAP Guide provides for flood insurance in an amount at least equal to the greater of the maximum flood insurance available for that type of property under the NFIP or an amount equal to the replacement cost of the bottom two stories above grade.²⁷ For larger structures in more expensive areas, it may be necessary to obtain private flood insurance to insure up to the full replacement cost of the structure or risk catastrophic financial losses even with NFIP coverage.

F. Compliance

This proposed rule would create a new section on complying with the floodplain management and protection of wetlands regulations in a new § 55.6 that would outline the process HUD or the responsible entity must follow to determine whether compliance with these regulations is required, and whether the 8-step decisionmaking process is required, as well as whether the proposed action would require notification and flood insurance. This section would not create any new requirements, but it would provide a roadmap to complying with this part, to assist practitioners. It would also move a summary of documentation requirements from § 55.27 to § 55.6(d).

²⁶ See: FEMA Flood Insurance and the NFIP Fact Sheet, released June 14, 2021. Available at <https://www.fema.gov/fact-sheet/flood-insurance-and-nfip>.

²⁷ See Sec. 3.9.2.3 of the MAP Guide, available at Available at: <https://www.hud.gov/sites/dfiles/OCHCO/documents/4430GHSGG.pdf>. See also Form HUD-92329, available at: <https://www.hud.gov/sites/dfiles/OCHCO/documents/92329.pdf>. Per the NFIP definition, the grade level is defined as the lowest or highest finished ground level that is immediately adjacent to the walls of the building. Use natural (pre-construction), ground level, if available, for Zone AO and Zone A (without BFE).

This proposed rule would also create new sections on limitations on HUD assistance in floodplains and wetlands in §§ 55.8 and 55.10. These sections would largely maintain existing restrictions from the current part 55, with some revisions and additions. For example, proposed § 55.8(b) would maintain the current requirement that all decisions be based on the latest available flood data provided by FEMA unless the current effective map indicates a higher flood risk than interim or preliminary sources.

Proposed § 55.8(c) would require that HUD or the responsible entity take measures to address repeat flood losses associated with structures identified by FEMA as Severe Repetitive Loss (SRL) properties,²⁸ in order for HUD assistance to be used in the proposed activity. When FEMA has approved improvements designed to prevent repeated flood losses at the SRL property and communicated these to the property owner, completion of this FEMA-identified mitigation qualifies the structure to be listed as “Mitigated” and may reduce the flood insurance premium of the SRL property. To ensure that the HUD substantial improvement, reconstruction, or new construction funding and HUD-required mitigation identified in the 8-step process deliver this benefit, HUD or the responsible entity would need to address FEMA identified SRL mitigation within Step 5 (minimization of impacts) of the 8-step process. The intent of this addition is to preserve lives and property, potentially reduce flood insurance costs, and ensure that HUD-identified mitigation aligns with that determined necessary by FEMA in order to avoid continued flood losses in properties that have experienced frequent flood losses.

G. Incidental Floodplain Exception

²⁸ SRL properties would be defined following current FEMA standards. In its April 2020 NFIP Flood Insurance Manual, FEMA designates NFIP-insured single-family or multifamily residential buildings as SRL where:

1. The building has incurred flood-related damage for which four or more separate claims payments have been made, with the amount of each claim (including building and contents payments) exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or
2. At least two separate claims payments (building payments only) have been made under such coverage, with the cumulative amount of such claims exceeding the market value of the building.

In both instances, at least two of the claims must be within 10 years of each other, and claims made within 10 days of each other will be counted as one claim. In determining SRL status, FEMA considers the loss history since 1978, or from the building’s construction if it was built after 1978, regardless of any changes in the ownership of the building. The term “SRL property” refers to either an SRL building or the contents within an SRL building, or both.

For purposes of defining when projects may proceed with onsite floodways, this proposed rule would remove floodways (as well as coastal high hazard areas and the LiMWA) from the existing incidental floodplain exception (currently at § 55.12(c)(7)) and replace it with a new § 55.8(a)(1), which would cover limitations on HUD assistance in floodways. This section would clarify that HUD assistance could be used in floodways in two circumstances:

1. Where an exception in § 55.12 excepts all proposed activities from compliance with part 55. This is not a change from HUD's existing regulations.

2. Where all structures and most improvements are removed from the floodway and a permanent covenant or comparable restriction would prevent future development or most new improvements in the floodway and/or wetland. This exception would combine aspects of the existing exceptions for floodplain restoration activities and incidental floodplains and would allow for limited improvements in the floodway, including functionally dependent uses, utility lines, de minimis improvements, and removal of existing structures or improvements.

This option would allow for a broader range of activities in the floodway than is permitted under the current incidental floodplain exception. However, it would require projects with onsite floodways to complete the 8-Step decisionmaking process in § 55.20 and determine that there are no practicable alternatives before approving any proposed activity that would modify or occupy the floodway.

This proposed rule would maintain a narrower version of the existing incidental floodplain exception as applied to the FFRMS floodplain (not including floodways, coastal high hazard areas, or within the LiMWA) in proposed § 55.12(g). This section would allow projects to proceed without completing the 8-Step decisionmaking process where an incidental portion of the project site includes the FFRMS floodplain.

H. Identifying Wetlands and Limitations on HUD Assistance in Wetlands

This proposed rule would add new sections discussing wetlands identification and HUD's limitations on work impacting wetlands to address questions HUD has received over the years

from practitioners. New § 55.9, “Identifying Wetlands,” would build on the definition of “wetland” in § 55.2(b)(11) to clarify common areas of confusion and remove unnecessary procedural requirements. This section would revise HUD’s current regulations to address limitations associated with exclusive use of the National Wetlands Inventory (NWI) for wetlands screening.²⁹ This rule would broaden the wetlands definition beyond NWI screening alone and would address the potential for data gaps or outdated information by requiring that HUD and responsible entities supplement the NWI with a visual observation of the property to assess wetlands indicators. Where these sources do not provide a conclusive answer, then practitioners may use one of three methods to determine the presence or absence of a wetland: (1) consultation with the U.S. Fish and Wildlife Service (FWS), which maintains the NWI, (2) reference to other Federal, state, and/or local resources and site analysis by the environmental review preparer, or (3) a wetlands evaluation prepared by a qualified wetlands scientist. This process would increase flexibility and avoid unnecessary consultation with FWS without increasing the risk that wetlands will not be accurately identified.³⁰

Revised § 55.10, “Limitations of HUD Assistance in Wetlands,” would explicitly define the procedural requirements for projects with the potential to directly or indirectly impact on- or off-site wetlands. The current part 55 is subject to interpretation on these requirements, and these revisions are intended to codify and clarify existing policies on wetlands compliance without imposing new requirements.

I. Clarification and Revisions of Exceptions

This proposed rule would break down the exceptions in § 55.12(a)-(c) into three separate sections – §§ 55.12, 55.13, and 55.14 – to improve overall clarity about the three distinct categories of excepted activities: those that are excluded from all compliance with part 55

²⁹ <https://www.fws.gov/program/national-wetlands-inventory>

³⁰ This proposed approach is specific to HUD’s regulations and differs from the United States Army Corps of Engineers (USACE) process for jurisdictional wetland determination identified in the USACE Wetland Delineation Manual.

(proposed § 55.12), those that must comply with the standards and limitations in part 55 such as prohibitions on activities in floodways but are not required to complete the 8-step process (proposed § 55.13), and those that may complete the modified 5-step decisionmaking process in lieu of the full 8-step process (proposed § 55.14). Beyond this reorganization, the proposed rule would make limited changes to the exceptions themselves.

1. Exceptions in Proposed § 55.12

Based on HUD experience and activities reflected in environmental review records for floodplain restoration projects, this proposed rule would seek to provide flexibility for floodplain-compatible parks and recreation uses routinely combined with floodplain and wetland restoration and preservation work. In a revised 24 CFR 55.12, “Inapplicability of 24 CFR part 55 to certain categories of proposed actions,” this proposed rule would expand on the existing exception for floodplain and wetland restoration and preservation activities to allow certain structures and improvements designed to be compatible with the beneficial floodplain or wetland function of a property.

Two exceptions would be removed under this proposed rule. The exception for sites where FEMA has issued a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) in the current § 55.12(c)(8) would be removed. HUD proposes to remove § 55.12(c)(8)(i) because a FEMA determination, through the LOMA/LOMR process, that a location is outside of the 1-percent-annual-chance floodplain or above base flood elevation is not intended to state whether the location is or is not within the FFRMS floodplain. HUD proposes to remove § 55.12(c)(8)(ii) on conditional LOMAs and conditional LOMRs, because this exception can incentivize adding fill in a floodplain in a manner that reduces floodplain function in adjoining areas by excepting such actions from compliance with part 55. HUD proposes to change that policy to disincentivize the use of sitewide fill and require completion of the 8-step process before adding fill to modify a floodplain. HUD also proposes to remove § 55.12(c)(11)

for projects related to ships and waterborne vessels because these are not activities that generally receive HUD funds, and practitioners have expressed confusion over its presence in the rule.

2. Exceptions in Proposed §§ 55.13 and 55.14

The proposed rule would make minimal changes to the activities currently listed in §§ 55.12(a) and (b), which must comply with the requirements in part 55 but which do not trigger the full 8-step process. Notably, it would add three new exceptions:

1. Proposed § 55.13(f), for special projects dedicated entirely to improving energy efficiency or installing renewable energy that do not meet the threshold for substantial improvement, would limit procedural hurdles to energy retrofit projects, which have limited potential to adversely affect floodplains or wetlands.

2. Proposed § 55.13(g) would provide an exception for the guarantee of Single-family mortgages under the Direct Guarantee procedure for the Section 184 Indian Housing loan guarantee program or the Section 184A Native Hawaiian Housing loan guarantee program.

3. Proposed § 55.14(e), for repairs, rehabilitation, or replacement of certain infrastructure with limited impact on impervious surface area, including streets, curbs, and gutters, would provide an exception for smaller scale infrastructure projects that is lacking from the current rule. This provision does not apply to critical actions, levee systems, chemical storage facilities (including any tanks), wastewater facilities, or sewer lagoons, all of which would require the 8-step process.

The proposed rule would also clarify the requirement currently listed in § 55.12(a)(3) and (4) that the footprint of the structure and paved areas is not significantly increased. Proposed § 55.14(c) and (d) would require that the footprint of the structure and paved areas is not increased by more than 20 percent.

J. 8-step Decisionmaking Process

For actions that trigger the 8-step decisionmaking process in whole or in part, HUD is proposing a number of revisions to § 55.20 to implement FFRMS, clarify proper completion of each of the 8 steps, and otherwise modernize requirements. These revisions include:

1. Codifying roles and responsibilities in the 8-step process, which have been frequently misunderstood.
2. Editing for consistency with FFRMS and new sections on identification and limitations associated with the FFRMS floodplain and wetlands.
3. Adding an option to publish public notices in Steps 2 and 7 on an appropriate government website as an alternative to a printed news medium.
4. Inserting further clarifications and examples of required and suggested analysis.
5. Adding a requirement to coordinate the 8-step process with any public engagement process associated with environmental justice, where project planners are also engaging stakeholders in compliance with E.O. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.” HUD intends to issue updated guidance on complying with E.O. 12898 prior to this proposed rule going into effect.

K. Elevation, Floodproofing, Minimization and Restoration

In addition to the revisions to § 55.20 described above, HUD would significantly expand step 5 in § 55.20(e) to implement FFRMS. Section 55.20(e) of the proposed rule would provide that, in addition to the current mitigation and risk reduction requirements, all new construction and substantial improvement actions in the FFRMS floodplain subject to the 8-step process must be elevated or, in certain cases, floodproofed above the FFRMS floodplain. If higher elevations, setbacks, or other floodplain management measures are required by State, Tribal, or locally adopted code or standards, HUD would require that those higher standards apply. The revised section would also provide more specific guidance on minimization and floodplain restoration

measures, which are a key component of increasing flood resilience and must be considered in the 8-step process.

For non-critical actions that are non-residential structures or multifamily residential structures that have no residential dwelling units below the FFRMS floodplain, HUD is proposing in § 55.20(e)(1)(ii) that projects may, as an alternative to being elevated above the FFRMS floodplain, be designed and constructed such that, below the FFRMS floodplain, the structure is floodproofed. HUD would, except for changing “base flood level” to “FFRMS floodplain,” as defined in § 55.7, adopt FEMA’s requirements for floodproofing as provided in FEMA’s regulations at 44 CFR 60.3(c)(3)(ii) and 60.3(c)(4)(i). In summary, all new construction or substantial rehabilitation of non-residential and certain mixed-use structures within the FFRMS floodplain that are not elevated must be floodproofed consistent with the latest FEMA standards at or above the level of the FFRMS floodplain. This provision would permit owners of non-residential and certain mixed-use buildings to construct structures in a way that is less expensive than elevating but allows the buildings to withstand flooding, thus appropriately balancing property protection with costs and reflecting the lower risk to human life and safety in non-residential structures or parts of structures.

In the case of residential buildings, in § 55.20(e)(1), HUD would provide that the term “lowest floor” must be applied consistent with FEMA regulations in 44 CFR 59.1, FEMA’s Elevation Certificate guidance, or FEMA’s current guidance that establishes lowest floor. Proposed § 55.20(e)(2) identifies specific strategies that can reduce flood risk and loss of beneficial values of floodplains and wetlands, including green infrastructure, reconfiguration of the project footprint, and incorporation of resilient buildings standards. These strategies are based on floodplain and stormwater management best practices and HUD experience. Based on requests for technical assistance in this area, HUD believes the inclusion of recommended minimization measures will assist 8-step process decisionmakers.

The proposed rule would also add § 55.20(e)(3) to more clearly describe what is meant by restoration and preservation of wetlands or beneficial functions of the floodplain. Floodplain preservation is a concept that has been used in 24 CFR part 55 implementation historically but has been defined primarily through guidance, and this clarification is based on past practice and the successful incorporation of these measures in HUD-assisted projects.

Finally, the proposed rule would replace § 55.20(e)(3), which defines mitigation measures specific to critical actions, with proposed § 55.20(e)(4). This section would establish mandatory actions to plan ahead for residents' safety in multifamily residential properties as well as critical actions.

L. Processing for Existing Nonconforming Sites

This draft proposes a new § 55.21, “Alternate processing for existing nonconforming sites,” to address concerns about existing sites with onsite floodways. This section would create a special approval process for improvements to existing HUD-assisted or HUD-insured properties with onsite floodways under the following circumstances:

1. HUD completes an 8-step process and environmental review pursuant to part 50 and mandates measures to reduce flood risk and ensure that there are no other environmental risks or hazards at the site,
2. Concrete measures will be taken to reduce flood risk and improve overall resilience at the site, including removing all residential units from the floodway, and
3. HUD determines that the HUD assistance cannot be practicably transferred to a safer site.

The purpose of this section is to establish a means of continuing HUD assistance or financing in exceptional circumstances to existing HUD-assisted or HUD-financed projects (e.g., properties receiving assistance through Public Housing or Section 8 Project-based Rental Assistance or subject to a HUD-insured mortgage) that would otherwise be unable to comply with part 55 due to the presence of an on-site floodway. This section should be applied only in very rare cases and is not intended to eliminate the general prohibition on providing HUD assistance for projects

within floodways. However, HUD recognizes that there are circumstances in which terminating HUD assistance would not improve residents' overall resilience or safety in the context of HUD's mission. In such cases, HUD will take a close look at the site and determine whether the best option to improve flood resilience would be financing improvements at the existing site or rejecting HUD assistance at the site. The Assistant Secretary for Community Planning and Development would have the authority to approve a project after HUD has met all of the conditions above.

M. Other Changes to Part 55

This proposed rule would make various other changes to part 55 to update terminology and references and would restructure part 55 for readability and accuracy. Additionally, this proposed rule would remove various provisions codified in part 55 that are outdated or underutilized.

HUD proposes removing § 55.24, "Aggregation," as this provision is redundant with aggregation principles described more clearly in 24 CFR parts 50 and 58, which also apply to all projects processed under 24 CFR part 55.

The proposed rule would also remove current § 55.25, "Areawide compliance." Areawide decisionmaking described in this section requires a complex notification process involving publications, and HUD has no record of the provision's use in a HUD-assisted activity since the inception of 24 CFR part 55. This provision is unnecessary, as HUD has well-established procedures for tiering of environmental review records that similarly facilitate compliance with part 55 across a geographic area without relying on § 55.25.

Instructions on documenting 24 CFR part 55 decisionmaking in the HUD environmental review record would be relocated from the end of the regulation in § 55.27 to § 55.6, where they would appear in context with general instructions on compliance with 24 CFR part 55 and a description of its structure. Additionally, HUD would revise the description of documentation requirements for consideration of alternatives to the proposed action to remove the requirement

to compile a list of alternative properties in the local market, as this information may be unavailable for some project types or not relevant to consideration of viable alternatives to achieve the goals of the decisionmaking process within a given HUD program context.

HUD is proposing to remove § 55.28, which in concept provides relief from five of the eight steps in the wetlands decisionmaking process when a permit has been secured from the United States Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act for a proposed HUD-assisted construction activity in a jurisdictional wetland outside of the floodplain. HUD proposes to remove this section because practitioners have not historically found it useful, and part 55 already contains another section that would offer similar relief from the 8-step process where USACE (or any other agency) has already completed the 8-step process. Section 55.26, which would be retained with revisions in the proposed rule, allows HUD or responsible entities to adopt another agency or responsible entity's eight-step process under conditions that are less restrictive than those in § 55.28, and would apply to decisionmaking under E.O. 11988 or 11990 carried out by USACE.

N. Minimum Property Standards

This rule also proposes to apply a new elevation standard to one-to-four-family residential structures with mortgages insured by the FHA. Generally, in HUD's single-family mortgage insurance programs, Direct Endorsement mortgagees submit applications for mortgage insurance to HUD, and Lender Insurance mortgagees endorse loans for insurance, after the structure has been built. Thus, there is no HUD review or approval before the completion of construction. In these instances, HUD is not undertaking, financing, or assisting construction or improvements. Thus, the FHA single family mortgage insurance program is not subject to review under E.O. 11988, NEPA (42 U.S.C. 4321 *et seq.*), or related environmental laws or authorities. However, newly constructed single-family properties in HUD's mortgage insurance programs are generally required to meet HUD's Minimum Property Standards under 24 CFR 200.926 through 200.926e. These property standards require that when HUD insures a mortgage

on a property, the property meets basic livability and safety standards and is code compliant. The section relating to construction in flood hazard areas, § 200.926d(c)(4), has long been included as a property standard.

In alignment with the proposals in this rulemaking that address FFRMS under E.O. 11988, HUD is also proposing to amend its Minimum Property Standards on site design, and specifically the standards addressing drainage and flood hazard exposure at § 200.926d(c)(4). The purpose of the amendment of the property standard is to decrease potential damage from floods, increase the safety and soundness of the property for residents, and provide for more resilient communities in flood hazard areas. HUD would revise the section by requiring the lowest floor (including basements and other permanent enclosures) of newly constructed and substantially improved structures, within the 1-percent-annual-chance floodplain, to be at least 2 feet above the base flood elevation as determined by best available information. For one- to four-unit housing under HUD mortgage insurance and low-rent public housing programs, HUD's Minimum Property Standards in 24 CFR part 200 currently require that a one- to four-unit property involving new construction, located in the 1 percent-annual-chance floodplain in the effective FIRM, be elevated to the effective FIRM base flood elevation. This proposed rule would add two feet of additional elevation to the base flood elevation as a resilience standard and would apply this standard to substantial improvement as well as new construction of such properties. This rule would not require consideration of the horizontally expanded FFRMS floodplain for single-family mortgage insurance projects governed by the requirements in the Minimum Property Standards.

O. Categorical Exclusion

HUD also proposes to amend § 50.20(a)(2)(i) to revise the categorical exclusion from further environmental review under NEPA for minor rehabilitation of one- to four-unit residential properties. Specifically, HUD would remove the qualification that the footprint of the structure may not be increased in a floodplain or wetland when HUD performs the review. In

2013, HUD removed the footprint trigger from the corresponding categorical exclusion at § 58.35(a)(3)(i) for rehabilitations reviewed by responsible entities. This change will make the review standard the same regardless of whether HUD or a responsible entity is performing the review. Moreover, when HUD performs a review under 24 CFR part 50, the categorical exclusion in § 50.20(a)(3) applies to construction, but not rehabilitation, of up to four units in a floodplain or wetland as an individual action such that an environmental assessment or environmental impact statement is normally not required. Rehabilitated structures in a floodplain or wetland with an increased footprint currently require an environmental assessment or environmental impact statement. See § 50.20(a)(3)(iii). It is logically inconsistent to require a greater review for minor rehabilitations than new construction. Similarly, it is logically inconsistent to apply a higher level of review for HUD as opposed to grantees because the proposed actions would be the same regardless of review authority under 24 CFR Part 50 or Part 58.

Actions under this proposed categorical exclusion would remain subject to E.O. 11988, E.O. 11990, and Part 55, and any impact resulting from an increased footprint in a floodplain or wetland would be fully addressed by the 8-step decisionmaking process in Part 55.

P. Permitting Online Posting

Finally, this proposed rule would update §§ 50.23, 58.43, 58.45, and 58.59 to allow public notices to be posted on an appropriate government website as an alternative to publication in local news media if the website is accessible to individuals with disabilities and provides meaningful access to individuals with Limited English Proficiency. This change would make parts 50 and 58 consistent with part 55, which would revise § 55.20 to allow public notices required as part of the 8-step process to be posted on a government website instead of a newspaper.

Q. Specific Questions for Comment

1. HUD invites comments on alternative approaches to define the FFRMS floodplain. Specifically, HUD seeks comments on whether to prioritize an alternative method among the three approaches to define the FFRMS floodplain, such as FVA as contemplated in the 2016 proposed rule, rather than CISA as discussed in this proposed rule.

2. HUD also invites comments on whether HUD should rely on the following alternative approach that HUD considered when developing this proposed rule: where CISA resources are not available, but the 0.2-percent-annual-chance floodplain has been mapped, the FFRMS floodplain for non-critical actions would be defined as either the 0.2-percent-annual-chance floodplain or the base flood elevation plus two feet of freeboard, whichever is lower. This alternative approach would reduce costs in the short term and the potential for overbuilding, but may result in higher flood risk and costs in the long term than the proposed approach of selecting the higher standard for non-critical actions.

3. HUD also invites comments on whether and under what circumstances it should rely on the FFRMS floodplain as defined by another Federal agency where that agency has already identified the FFRMS floodplain using the approach defined in their policies for a particular project. HUD requests comments on whether Part 55 should permit HUD or the responsible entity to rely on the FFRMS floodplain as defined by another Federal agency and, if so, under what circumstances this would be appropriate.

4. Additionally, HUD seeks comment on what factors or stakeholder needs HUD should consider when establishing an effective date for this rule and whether HUD should establish an extended effective date.

5. There may be instances in which the FVA elevation is more protective than the 0.2-percent-annual-chance elevation due to wave action in coastal areas. HUD invites comment on including the following exception for coastal areas where the 0.2-percent-annual-chance floodplain is used to define FFRMS due to the absence of CISA maps and analysis: where FVA

is more protective than the 0.2-percent-annual-chance elevation due to wave action, HUD would require use of FVA to define the FFRMS and elevation requirements.

6. HUD recognizes the critical importance of this rule on the long-term viability of HUD's assisted and insured housing, but invites public comment on alternative measures that may help to promote the production and availability of affordable housing in the near-term while still promoting flood resilience.

7. In 2016, HUD proposed elevation standards for the FHA single family Minimum Property Standards (MPS) identical to those in this proposed rule. HUD invites comment as to whether the elevation standard should remain as proposed in this rule for FHA single family properties.

8. Finally, HUD invites comment on whether provisions of the proposed rule will redress, perpetuate, or create any disproportionate adverse impact against any group based on race, national origin, color, religion, sex, familial status, or disability as well as comments on how HUD can further incorporate equity considerations into this proposed rule to help HUD meet its affordable housing and community development mission.

R. Tribal Consultation

HUD's Government-to-Government Tribal Consultation Policy calls for consultation with Tribal Nations and Tribal Leaders early in the rulemaking process on matters that have Tribal implications. Accordingly, on June 10, 2021, HUD sent letters to all eligible funding recipients under NAHASDA and their tribally designated housing entities informing them of the nature of the forthcoming rule and soliciting comments. This letter announced a 30-day comment period and a webinar and conference call consultation session. On August 18, 2021, HUD sent a second letter with a 60-day comment period to review an early draft of the regulatory changes. During this period, HUD held an additional consultation session via webinar and conference call. This letter was posted on Codetalk, the HUD Office of Native American Programs' website, along with an early outline of the rule. During this draft review period, HUD

received one written comment, suggesting that HUD explicitly recognize the right to Tribal self-governance in Part 55. HUD acknowledges the sovereignty of federally recognized American Indian and Alaska Native tribes and is committed to operate within a government-to-government relationship to allow tribes the maximum amount of responsibility for administering their housing programs. Tribes have the opportunity to comment on this proposed rule, and HUD welcomes further comment.

IV. Findings and Certifications

Regulatory Review – E.O. 12866 and E.O. 13563

Under E.O. 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a “significant regulatory action” as defined in section 3(f) of E.O. 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order).

As discussed in this preamble, the proposed regulatory amendments would, based on E.O. 13690 and the Guidelines, require, as part of the decisionmaking process established to ensure compliance with E.O. 11988 (Floodplain Management), that new construction or substantial improvement in a floodplain be elevated above the FFRMS floodplain or floodproofed. These amendments would also provide a process for

determining the FFRMS Floodplain that would establish a preference for the climate-informed science approach (CISA). It would also revise HUD regulations in various other ways, including permitting HUD assistance to be used for a broader range of reasonable activities in floodways, and would allow improvements beyond maintenance at sites with onsite floodplains in exceptional circumstances, after completion of the 8-step process. This proposed rule would also revise HUD's Minimum Property Standards for one-to-four-unit housing to require that the lowest floor in newly constructed and substantially improved structures located within the 1-percent-annual-chance floodplain be built at least 2 feet above the base flood elevation. This rule also proposes to revise a categorical exclusion available when HUD performs the environmental review by making it consistent with changes to a similar categorical exclusion that is available to HUD grantees or other responsible entities when they perform the environmental review. Other changes would clarify, streamline, and update HUD's regulations.

The rule is part of HUD's commitment under HUD's Climate Action Plan. Building to the standards discussed in this proposed rule would increase resiliency, reduce the risk of flood loss, minimize the impact of floods on human safety, health, and welfare, and promote sound, sustainable, long-term planning informed by a more accurate evaluation of risk that takes into account possible sea level rise and increased development associated with population growth.

Regulatory Impact Analysis

Elevating HUD-assisted structures located in and around the FFRMS floodplain will lessen damage caused by flooding and avoid relocation costs to tenants associated with temporary moves when HUD-assisted structures sustain flood damage and are temporarily uninhabitable. These benefits, which are realized throughout the life of HUD-assisted structures, are offset by the one-time increase in construction costs, borne only at the time of construction.

In addition, the likelihood that floods in coastal areas will become more frequent and damaging due to rising sea levels in future decades necessitates a stricter standard than the one currently in place. According to NOAA, sea level along the contiguous U.S. coastline is expected to rise, on average, 10 to 12 inches (0.25 to 0.30 meters) over the next 30 years (2020 to 2050).³¹ The Intergovernmental Panel on Climate Change (2019) also confirms that the sea level will continue rising throughout the 21st century.³²

As discussed in the regulatory impact analysis (RIA) that accompanies this rule, HUD estimates that requiring developers to construct or floodproof HUD-funded or insured properties to two feet above base flood elevation for single-family homes and above the CISA floodplain for multifamily properties will increase construction costs by \$5.157 million to \$107.294 million per annual cohort. These are one-time costs which occur at the time of construction. Benefits of the increased standard include avoided damage to buildings, as measured by decreased insurance premiums, and avoided costs associated with homeowners and tenants being displaced. These benefits occur annually over the life of the structures. Over a 40-year period, HUD estimates the NPV of aggregate benefits will total \$64.908 million to \$356.584 million.

These estimates are based on the annual production and rehabilitation of HUD-assisted and insured structures in the floodplain and accounts for the 40 states (in addition to the District of Columbia and Puerto Rico) with existing freeboard requirements. The cost of compliance and expected benefits are lower in these states than in states that have no minimum elevation requirements above base flood elevation. HUD's analysis does not consider benefits due to further coastal sea level or riverine rise. Further increases in sea level rise or inland and riverine

³¹ Sweet, W.V., B.D. Hamlington, R.E. Kopp, C.P. Weaver, P.L. Barnard, D. Bekaert, W. Brooks, M. Craghan, G. Dusek, T. Frederikse, G. Garner, A.S. Genz, J.P. Krasting, E. Larour, D. Marcy, J.J. Marra, J. Obeysekera, M. Osler, M. Pendleton, D. Roman, L. Schmied, W. Veatch, K.D. White, and C. Zuzak, 2022: Global and Regional Sea Level Rise Scenarios for the United States: Updated Mean Projections and Extreme Water Level Probabilities Along U.S. Coastlines. NOAA Technical Report NOS 01. National Oceanic and Atmospheric Administration, National Ocean Service, Silver Spring, MD, 111 pp. <https://oceanservice.noaa.gov/hazards/sealevelrise/sealevelrise-tech-report.html>

³² IPCC, 2019: Summary for Policymakers. In: IPCC Special Report on the Ocean and Cryosphere in a Changing Climate [H.-O. Pörtner, D.C. Roberts, V. Masson-Delmotte, P. Zhai, M. Tignor, E. Poloczanska, K. Mintenbeck, A. Alegría, M. Nicolai, A. Okem, J. Petzold, B. Rama, N.M. Weyer (eds.)]. In press.

flooding would increase the benefits of this rule. For a complete description of HUD's analysis, please see the accompanying RIA for this rule on [regulations.gov](https://www.regulations.gov).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.

With respect to all entities, including small entities, it is unlikely that the economic impact would be significant. As the RIA explains, the benefits of reduced damage offset the construction costs. Further, small entities may benefit more since they are less likely to be able to endure financial hardships caused by severe flooding.

Based on an engineering study conducted for FEMA³³, the construction cost of increasing the elevation of the base of a new residential structure two additional feet of vertical elevation varies from 0.3 percent to 4.8 percent of the base building cost. This results in an increase of up to \$7,834 per single family home and \$4,772 per unit in a multi-family property located in states with no existing freeboard requirements. Consequently, this would not pose a significant burden to small entities in the single family housing development industry.

These costs are likely higher than would actually be caused by the increased standard because most HUD-assisted or insured substantial improvement projects already involve elevation to comply with the current standard, elevation to the base flood elevation (base flood elevation+0). Thus, elevating a structure an additional two feet would be marginal compared to the initial cost of elevation to the floodplain level.

For this reason, the undersigned certifies that there is no significant economic impact on small entities. Notwithstanding HUD's determination that this rule will not have a significant

³³ See Federal Emergency Management Agency. 2013. "2008 Supplement to the 2006 Evaluation of the National Flood Insurance Program's Building Standards".

economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that would meet HUD's program responsibilities.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact will be available for review in the docket for this rule on *Regulations.gov*.

Federalism Impact

E.O. 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This rule does not have federalism implications and would not impose substantial direct compliance costs on state and local governments nor preempts state law within the meaning of the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Paperwork Reduction Act

The information collection requirements contained in this rule were reviewed by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Number 2506-0151. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a valid control number.

List of Subjects

24 CFR Part 50

Environmental impact statements.

24 CFR Part 55

Environmental impact statements, Floodplains, Wetlands.

24 CFR Part 58

Community development block grants, Environmental impact statements, Grant programs-housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Lead poisoning, Loan programs-housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, for the reasons stated in the preamble above, HUD proposes to amend 24 CFR parts 50, 55, 58, and 200 as follows:

PART 50 - PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

1. The authority citation for part 50 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 4321-4335; and Executive Order 11991, 3 CFR, 1977 Comp., p. 123.

§ 50.4 [Amended]

2. Amend § 50.4(b)(2) by removing “(3 CFR, 1977 Comp., p. 117)” and replacing it with “as amended by Executive Order 13690, February 4, 2015 (80 FR 6425), (3 CFR, 2015 Comp., p. 6425).”

3. Revise § 50.20(a)(2)(i) to read as follows:

§ 50.20 Categorical exclusions subject to the Federal laws and authorities cited in § 50.4.

(a) * * *

(2) * * *

(i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, and the land use is not changed;

* * * * *

§ 50.23 [Amended].

4. In § 50.23(c), remove the comma after “printed news medium,” then add “or on an appropriate government website that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency” after “printed news medium”.

PART 55 - FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

5. The authority citation for part 55 is revised to read as follows:

Authority: 42 U.S.C. 3535(d), 4001-4128 and 5154a; E.O. 13690, 80 FR 6425, E.O. 11988, FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990, 42 FR 26961, 3 CFR, 1977 Comp., p. 121.

6. Amend § 55.1 as follows:

a. Revise the section heading;

b. In paragraph (a)(1), add “, as amended,” after Floodplain Management”;

c. Revise paragraph (a)(3);

d. Remove paragraphs (a)(4) and (a)(5);

e. Remove and reserve paragraph (b); and

f. Remove paragraph (c).

The revisions and additions read as follows:

§ 55.1 Purpose.

(a) * * *

(3) This part implements the requirements of Executive Order 11988, Floodplain Management, as amended, and Executive Order 11990, Protection of Wetlands, and employs the principles of the Unified National Program for Floodplain Management. These regulations apply to all proposed actions for which approval is required, either from HUD (under any applicable HUD program) or from a recipient (under programs subject to 24 CFR part 58), that are subject to potential harm by location in floodplains or wetlands. Covered actions include acquisition, construction, demolition, improvement, disposition, financing, and use of properties located in floodplains or wetlands.

(b) [Reserved].

7. Amend § 55.2 as follows:

a. In paragraph (a), remove “Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030, February 10, 1978)” and add in its place “Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input (80 FR 64008, October 22, 2015) (Water Resources Council Interagency Guidelines)”;

b. Revise paragraphs (b)(1) and (b)(3)(i)(B);

c. Remove and reserve paragraph (b)(3)(ii);

d. Redesignate paragraphs (b)(4) to (b)(7) as paragraphs (b)(5) to (b)(8), respectively, add new paragraph (b)(4); revise redesignated paragraph (b)(5); redesignate paragraphs (b)(9) to (b)(11) as paragraphs (b)(11) to (b)(13), add new paragraphs (b)(9) and (b)(10) and revise redesignated paragraphs (b)(11) and (b)(13); and

e. Remove “§ 55.2(b)(1)” from newly redesignated paragraph (b)(6) and add in its place “§ 55.8(b)”.

The revisions and additions read as follows:

§ 55.2 Terminology.

* * * * *

(b) * * *

(1) *Coastal high hazard area* means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a Flood Insurance Rate Map (FIRM) or Flood Insurance Study (FIS) under FEMA regulations, or according to best available information. (See, § 55.8(b) for appropriate data sources.)

* * * * *

(3) * * *

(i) * * *

(B) Provide essential and irreplaceable records or utility or emergency services that may become lost or inoperative during flood and storm events (e.g., community stormwater management infrastructure, water treatment plants, data storage centers, generating plants, principal utility lines, emergency operations centers including fire and police stations, and roadways providing sole egress from flood-prone areas); or

* * * * *

(ii) [Reserved]

(4) *Federal Flood Risk Management Standard (FFRMS) floodplain* means the floodplain as defined by Executive Order 13690 and Water Resources Council Interagency Guidelines and further described as applied to HUD-assisted activities by § 55.7 of this part.

(5) *0.2-percent-annual-chance (500-year) floodplain* means the area, including the base flood elevation, subject to inundation from a flood having a 0.2 percent chance or greater of being equaled or exceeded in any given year. (See §55.8(b) for appropriate data sources).

* * * * *

(9) *Impervious surface area* means an improved surface that measurably reduces the rate of water infiltration below the rate that would otherwise be provided by the soil present in a location prior to improvement, based on the soil type identified either by the Natural Resource Conservation Service Soil Survey or geotechnical study. Impervious surfaces include, but are not limited to, unperforated concrete or asphalt ground cover, unvegetated roofing materials, and other similar treatments that impede infiltration.

(10) *Limit of Moderate Wave Action (LiMWA)* means the inland limit of the portion of coastal Zone AE where wave heights can be between 1.5 and 3 feet during a base flood event, subjecting properties to damage from waves and storm surge. (See, § 55.8(b) for appropriate data sources)

(11) *1-percent-annual-chance (100-year) floodplain* means the area subject to inundation from a flood having a one percent or greater chance of being equaled or exceeded in any given year. (See § 55.8(b) for appropriate data sources).

* * * * *

(13) *Wetlands* means those areas that are inundated or saturated by surface or ground water with a frequency sufficient to support, and under normal circumstances does or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, prairie potholes, wet meadows, river overflows, mud flats, and natural ponds. This definition includes those wetland areas separated from their natural supply of water as a result of activities such as the construction of structural flood protection methods or solid fill road beds and activities such as mineral extraction and navigation improvements. This definition includes both wetlands subject to and those not subject to section 404 of the Clean Water Act as well as constructed wetlands. It does not include ponds that do not conform to the

definition above, or deep-water aquatic habitats such as streams, creeks, and rivers. (See § 55.9 for appropriate data sources.)

8. Amend § 55.3 as follows:

- a. Redesignate paragraphs (a) through (d) as (b) through (e);
- b. Revise newly redesignated paragraphs (c)(1), (c)(4), (d), and (e);
- c. Remove the word “technical” from newly redesignated paragraph (c)(3); and
- d. Add new paragraphs (a) and (f).

The revisions and additions read as follows:

§ 55.3 Assignment of responsibilities.

(a) The implementation of Executive Orders 11988 and 11990 under this part shall be conducted by HUD for Department-administered programs subject to environmental review under 24 CFR part 50 and by authorized responsible entities that are responsible for environmental review under 24 CFR part 58.

* * * * *

(c) * * *

(1) Ensure compliance with this part for all actions under their jurisdiction that are proposed to be conducted, supported, or permitted in a floodplain or wetland, including taking full responsibility for all decisions made under their jurisdiction that are made pursuant to § 55.20 for environmental reviews completed pursuant to 24 CFR part 50;

* * * * *

(4) Incorporate in departmental regulations, handbooks, and project and site standards those criteria, standards, and procedures related to compliance with this part.

(d) *Responsible Entity Certifying Officer.* Certifying Officers of responsible entities administering or reviewing activities subject to 24 CFR part 58 shall comply with this part in

carrying out HUD-assisted programs. Certifying Officers shall monitor approved actions and ensure that any prescribed mitigation is implemented.

(e) *Grantees and Applicants.* Grantees and Applicants that are not acting as responsible entities shall:

(1) Supply HUD (or the responsible entity authorized by 24 CFR part 58) with all available, relevant information necessary for HUD (or the responsible entity) to perform the compliance required by this part, including environmental review record documentation described in 24 CFR 58.38, as applicable;

(2) Implement mitigating measures required by HUD (or the responsible entity authorized by 24 CFR part 58) under this part or select alternate eligible property; and

(3) Monitor approved actions and ensure that any prescribed mitigation is implemented.

(f) *Third party providers.* Consultants and other parties to the environmental review process may prepare maps, studies (e.g., hydraulic and hydrologic studies), and reports to support compliance with this part, including identification of floodplains and wetlands and development of alternatives or minimization measures. The following responsibilities, however, may not be delegated to the third-party provider:

(1) Receipt of public or agency comments;

(2) Selection or rejection of alternatives analyzed in Step 3 of the 8-Step Process;

(3) Selection or rejection of minimization measures analyzed in Step 5 of the 8-Step Process;

(4) Determination whether avoidance of floodplain or wetland impacts, according to the purpose of Executive Orders 11988 and 11990, is or is not practicable.

9. Add § 55.4 to subpart A to read as follows:

§ 55.4 Notification of floodplain hazard.

(a) *Notification for property owners, buyers, and developers.* For actions in the FFRMS floodplain (as defined in § 55.7), HUD (or HUD's designee) or the responsible entity must ensure that any party participating in the transaction is notified that the property is in the FFRMS floodplain and whether flood insurance is required or available in this location. Notification shall also include a description of the approximate elevation of the FFRMS floodplain, proximity to flood-related infrastructure impacting the site including dams and levees, the location of ingress and egress or evacuation routes relative to the FFRMS floodplain, disclosure of information on flood insurance claims filed on the property to the extent available from FEMA, and other relevant information such as available emergency notification resources.

(b) *Renter notification.* For HUD-assisted and HUD-insured rental properties within the FFRMS floodplain, new and renewal leases must include acknowledgements signed by residents indicating that they have been advised that the property is in a floodplain and flood insurance is available for their personal property. Notification shall also include the location of ingress and egress routes relative to the FFRMS floodplain, available emergency notification resources, and the property's emergency procedures for residents in the event of flooding.

(c) *Conveyance restrictions for the disposition of multifamily real property.* (1) In the disposition (including leasing) of multifamily properties acquired by HUD that are located in the FFRMS floodplain, the documents used for the conveyance must:

(i) Refer to those uses that are restricted under identified Federal, State, or local floodplain regulations; and

(ii) Include any land use restrictions limiting the use of the property by a grantee or purchaser and any successors under state or local laws.

(2) (i) For disposition of multifamily properties acquired by HUD that are located in the FFRMS floodplain and contain critical actions, HUD shall, as a condition of approval of the disposition, require by covenant or comparable restriction on the property's use that the property

owner and successive owners provide written notification to each current and prospective tenant concerning:

(A) The hazards to life and to property for those persons who reside or work in a structure located within the FFRMS floodplain, and

(B) The availability of flood insurance on the contents of their dwelling unit or business.

(ii) The notice shall also be posted in the building so that it will be legible at all times and easily visible to all persons entering or using the building.

10. Add § 55.5 to subpart A to read as follows:

§ 55.5 Flood insurance.

(a)(1) As required by section 102(a) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a), when HUD financial assistance (including mortgage insurance) is proposed for acquisition or construction purposes in any special flood hazard area (as designated by the Federal Emergency Management Agency (FEMA) on an effective Flood Insurance Rate Map (FIRM) or Flood Insurance Study (FIS), structures for which HUD financial assistance is provided must be covered by flood insurance in an amount at least equal to the project cost less estimated land cost, the outstanding principal balance of any HUD-assisted or HUD-insured loan, or the maximum limit of coverage available under the National Flood Insurance Program, whichever is least. Under section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), such proposed assistance in any special flood hazard area shall not be approved in communities identified by FEMA as eligible for flood insurance but which are not participating in the National Flood Insurance Program. This prohibition only applies to proposed HUD financial assistance in a FEMA-designated special flood hazard area one year after the community has been formally notified by FEMA of the designation of the affected area. This requirement is not applicable to HUD financial assistance in the form of formula grants to states, including financial assistance under the State-administered CDBG Program (24 CFR part 570,

subpart I) and, Emergency Solutions Grant amounts allocated to States (24 CFR part 576), and HOME funds provided to a state under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701-12839). HUD strongly encourages that flood insurance be obtained and maintained for all HUD-assisted structures in the FFRMS floodplain, sites that have previously flooded, or sites in close proximity to a floodplain.

(2) Under section 582 of the National Flood Insurance Reform Act of 1994 (42 U.S.C. 5154a), HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration of damage to any personal, residential, or commercial property if:

(i) The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and

(ii) The person failed to obtain and maintain the flood insurance.

(b) HUD or the responsible entity may impose flood insurance requirements that exceed the minimums established by the Flood Disaster Protection Act of 1973 or by Tribal, state, or local requirements when needed to minimize financial risk from flood hazards. HUD and responsible entities have discretion to require that flood insurance be maintained for structures outside of the FEMA-mapped floodplain but within the FFRMS floodplain and/or that structures be insured up to the full replacement cost of the structure when needed to minimize financial risk from flood hazards. Nothing in this part limits additional flood insurance requirements that may be imposed by a mortgagee participating in a HUD assistance or mortgage insurance or guarantee program.

11. Add § 55.6 to subpart A to read as follows:

§ 55.6 Complying with this part.

(a) *Process.* The process to comply with this part is as follows:

(1) HUD or the responsible entity shall determine whether compliance with this part is required. Refer to § 55.12 for a list of activities that do not require further compliance with this part beyond the provisions of paragraph (c) of this section.

(2) HUD or the responsible entity shall refer to § 55.8 to determine whether the proposed action is eligible for HUD assistance or if it must be rejected as proposed.

(3) If the project requires compliance under this part and is not prohibited by § 55.8, HUD or the responsible entity shall refer to § 55.13 to determine whether the 8-step decisionmaking process is required. If an exception in that section applies, the proposed project may proceed without further analysis under this part.

(4) HUD or the responsible entity shall refer to § 55.10 to determine whether an 8-step decisionmaking process for wetland protection is required or whether best practices to minimize potential indirect impacts to wetlands should be pursued.

(5) HUD or the responsible entity shall determine whether an exception applies that would allow them to complete an abbreviated decisionmaking process pursuant to § 55.14.

(6) HUD or the responsible entity shall follow the decisionmaking process described in § 55.20, eliminating any steps as permitted under § 55.14.

(b) *Decisionmaking.* HUD or the responsible entity shall determine whether to approve the action as proposed, approve the action with modifications or at an alternative site, or reject the proposed action, based on its analysis of the proposed risks and impacts. HUD or the responsible entity has discretion to reject any project where it determines that the level of flood hazard is incompatible with the proposed use of the site or that the extent of impacts to wetlands or to the beneficial function of floodplains is not acceptable, regardless of whether it would otherwise be acceptable under this part.

(c) *Other requirements.* Refer to §§ 55.4 and 55.5 to determine whether the proposed action may require notifications and/or flood insurance. Actions that do not require full compliance under this part may still trigger notification and flood insurance requirements.

(d) *Documentation.* HUD or responsible shall require that all of the analysis required under this part, including applicable exceptions and all required steps described in § 55.20, be documented in the environmental review record.

Subpart B - Application of Executive Orders on Floodplain Management and Protection of Wetlands

12. Add § 55.7 to subpart B to read as follows:

§ 55.7 Identifying the FFRMS floodplain.

(a) HUD or the responsible entity shall determine all compliance with the floodplain review requirements of this part based on the FFRMS floodplain.

(b) For a non-critical action, HUD or the responsible entity shall define the FFRMS floodplain using the following process:

(1) If HUD-approved maps of the jurisdiction have been developed using a climate-informed science approach (CISA), those areas designated as having an elevated flood risk during the anticipated life of the project; or

(2) If CISA data as described above is not available but FEMA has defined the 0.2-percent-annual-chance floodplain, those areas that FEMA has designated as within the 0.2-percent-annual-chance floodplain; or

(3) If neither CISA nor FEMA-mapped 0.2-percent-annual-chance floodplain data is available, those areas that result from adding an additional two feet to the base flood elevation as established by the effective FIRM or FIS or – if available – FEMA-provided preliminary or pending maps or studies or advisory base flood elevations.

(4) The latest of these resources shall be used. However, a base flood elevation based on CISA data or an interim or preliminary FEMA map cannot be used if it is lower than the base flood elevation on the current FIRM or FIS.

(c) For a critical action, the FFRMS floodplain is either:

(1) If HUD-approved CISA maps of the jurisdiction have been developed, those areas designated as having an elevated flood risk – as determined based on the criticality of the action – during the anticipated life of the project; or

(2) If CISA data as described above is not available, an area either within the 0.2-percent-annual-chance floodplain or within the area that results from adding an additional three feet to the base flood elevation. The larger floodplain and higher elevation must be applied where the 500-year floodplain is mapped. If FEMA resources do not map the 0.2-percent-annual-chance floodplain, the FFRMS floodplain is the area that results from adding an additional three feet to the base flood elevation based on best available information.

(d) If FEMA FIRMS, FIS, preliminary maps or advisory base flood elevations are unavailable or insufficiently detailed to determine base flood elevation and if CISA data is not available, other Federal, Tribal, State, or local data shall be used as “best available information.” If best available information is based only on past flooding and does not consider future flood risk:

(1) For non-critical actions, the FFRMS floodplain includes those areas that result from adding an additional two feet to the 1-base flood elevation based on best available information.

(2) For critical actions, the FFRMS floodplain is the higher of the 0.2-percent-annual-chance floodplain based on best available information or areas that result from adding an additional three feet to the base flood elevation based on best available information.

(e) When preparing an Environmental Impact Statement (EIS), an analysis of the best available, actionable climate science, as determined by HUD or the responsible entity, must be performed to define the FFRMS floodplain. These sources may supplement the FIRM or ABFE in order to better minimize impacts to projects or to elevate or floodproof structures above the risk adjusted floodplain. These sources may not be used as a basis for a lower elevation than otherwise required under this part.

(f) Nothing in this part limits the voluntary use of CISA, where available, by responsible entities to define the FFRMS floodplain on a project-specific basis where HUD-approved jurisdictional maps are not available; however, this approach may not be used as a basis for a lower elevation than otherwise required under this section.

13. Add § 55.8 to subpart B read as follows:

§ 55.8 Limitations on HUD assistance in floodplains.

(a) HUD financial assistance (including mortgage insurance) may not be approved with respect to:

(1) Any action located in a floodway unless one of the following applies:

(i) An exception listed in §55.12 applies; or

(ii) A permanent covenant or comparable restriction will preserve all onsite FFRMS floodplain and/or wetland areas from future development or improvements beyond maintenance of existing uses listed in paragraphs (A) through (C) below and the proposed project site contains no buildings or improvements that modify or occupy the floodway, except that the presence of the following will not prohibit the approval of HUD financial assistance:

(A) Functionally dependent uses (as defined in § 55.2(b)(7)) and utility lines;

(B) De minimis improvements (such as landscaping improvements, sports courts, or trails), including minimal ground disturbance or placement of impervious surface area to ensure accessibility where this is permitted by local ordinances and does not increase flood risk to the property; or

(C) Buildings and improvements that will be removed as part of the proposed action.

(2) Any critical action located in a floodway, coastal high hazard area or LiMWA; or

(3) Any noncritical action located in a coastal high hazard area, or LiMWA, unless the action is a functionally dependent use, is limited to existing structures or improvements, or is reconstruction following destruction caused by a disaster. If the action is not a functionally

dependent use, the action must be designed for location in a coastal high hazard area. An action will be considered designed for a coastal high hazard area if:

(i) In the case of reconstruction following destruction caused by a disaster, or substantial improvement, the work meets the current standards for V zones in FEMA regulations (44 CFR 60.3(e)) and, if applicable, the Minimum Property Standards for such construction in 24 CFR 200.926d(c)(4)(iii); or

(ii) In the case of existing construction (including any minor improvements that are not substantial improvement):

(A) The work met FEMA elevation and construction standards for a coastal high hazard area (or if such a zone or such standards were not designated, the 1-percent-annual-chance floodplain) applicable at the time the original improvements were constructed; or

(B) If the original improvements were constructed before FEMA standards for the 1-percent-annual-chance floodplain became effective or before FEMA designated the location of the action as within the 1-percent-annual-chance floodplain, the work would meet at least the earliest FEMA standards for construction in the 1-percent-annual-chance floodplain.

(b) All determinations made pursuant to this section shall be based on the effective FIRM or FIS unless FEMA has provided more current information. When FEMA provides interim flood hazard data, such as ABFE or preliminary maps and studies, HUD or the responsible entity shall use the latest of these sources. However, a base flood elevation from an interim or preliminary source cannot be used if it is lower than the base flood elevation on the current FIRM and FIS.

(c) Where HUD assistance is proposed for actions subject to § 55.20 on structures designated by FEMA as Severe Repetitive Loss (SRL) properties, and FEMA has approved measures that if implemented would qualify the property for a status of “Mitigated” as to the SRL list, HUD or the responsible entity will ensure that FEMA-identified mitigation measures are addressed under § 55.20(e).

14. Add § 55.9 to subpart B to read as follows:

§ 55.9 Identifying wetlands.

The following process shall be followed in making the wetlands determination:

(a) HUD or the responsible entity shall determine whether the action involves new construction that is located in a wetland.

(b) As primary screening, HUD or the responsible entity shall verify whether the project area is located in proximity to wetlands identified on the National Wetlands Inventory (NWI) and assess the site for visual indication of the presence of wetlands such as hydrology (water), hydric soils, or wetland vegetation. Where the primary screening is inconclusive, potential wetlands should be further evaluated using one or more of the following methods:

(i) Consultation with the Department of the Interior, Fish and Wildlife Service (FWS), for information concerning the location, boundaries, scale, and classification of wetlands within the area.

(ii) Reference to the Department of Agriculture, Natural Resources Conservation Service (NRCS) National Soil Survey (NSS), and any Tribal, State, or local information concerning the location, boundaries, scale, and classification of wetlands within the action area and further site study by the environmental review preparer with reference to Federal guidance on field identification of the biological (rather than jurisdictional) characteristics of wetlands.

(iii) Evaluation by a qualified wetlands scientist to delineate the wetland boundaries on site.

15. Revise § 55.10 to read as follows:

§ 55.10 Limitations on HUD assistance in wetlands.

(a) When the proposed project includes new construction activities (including grading, clearing, draining, filling, diking, and impounding) that will have a direct impact to onsite

wetlands identified by the process described in § 55.9, compliance with this part requires completion of the 8-step process in § 55.20 to address wetland impacts.

(b) When the proposed project may indirectly affect wetlands by modifying the flow of stormwater, releasing pollutants, or otherwise changing conditions that contribute to wetlands viability, the significance of these impacts must be evaluated and minimized through best management practices. If the project site includes wetlands that will not be impacted by new construction, HUD strongly encourages measures to preserve such wetlands from future impacts, including by obtaining a restrictive covenant, conservation easement, or other mechanism.

(c) When the proposed project may indirectly affect off-site wetlands, impacts should be minimized to the extent practicable. While this part does not require further decisionmaking to address these effects under the authority of Executive Order 11990, measures to address offsite wetlands impacts may be necessary to comply with related laws and authorities including the Endangered Species Act or to address significant impacts under the National Environmental Policy Act.

§ 55.11 - [Removed and Reserved]

16. Remove and reserve § 55.11.

17. Revise § 55.12 to read as follows:

§ 55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.

With the exception of the flood insurance requirements in § 55.5, this part shall not apply to the following categories of proposed HUD actions:

(a) HUD-assisted activities described in 24 CFR 58.34 and 58.35(b);

(b) HUD-assisted activities described in 24 CFR 50.19, except as otherwise indicated in §50.19;

(c) The approval of financial assistance for restoring and preserving the natural and beneficial functions and values of floodplains and wetlands, including through acquisition of

such floodplain and wetland property, where a permanent covenant or comparable restriction is placed on the property's continued use for flood control, wetland protection, open space, or park land, but only if:

- (1) The property is cleared of all existing buildings and walled structures; and
- (2) The property is cleared of related improvements except those which:
 - (i) Are directly related to flood control, wetland protection, open space, or park land (including playgrounds and recreation areas);
 - (ii) Do not modify existing wetland areas or involve fill, paving, or other ground disturbance beyond minimal trails or paths; and
 - (iii) Are designed to be compatible with the beneficial floodplain or wetland function of the property.
- (d) An action involving a repossession, receivership, foreclosure, or similar acquisition of property to protect or enforce HUD's financial interests under previously approved loans, grants, mortgage insurance, or other HUD assistance;
- (e) Policy-level actions described at 24 CFR 50.16 that do not involve site-based decisions;
- (f) A minor amendment to a previously approved action with no additional adverse impact on or from a floodplain or wetland;
- (g) HUD's or the responsible entity's approval of a project site, an incidental portion of which is situated in the FFRMS floodplain (not including the floodway, LiMWA, or coastal high hazard area), but only if:
 - (1) The proposed project site does not include any existing or proposed buildings or improvements that modify or occupy the FFRMS floodplain except de minimis improvements such as recreation areas and trails;
 - (2) The proposed project will not result in any new construction in or modifications of a wetland; and

(3) A permanent covenant or comparable restriction will prevent all future development or improvements in the onsite FFRMS floodplain and/or wetland areas.

(h) Issuance or use of Housing Vouchers or other forms of rental subsidy where HUD, the awarding community, or the public housing agency that administers the contract awards rental subsidies that are not project-based (i.e., do not involve site-specific subsidies);

(i) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and persons with disabilities.

18. Add § 55.13 to subpart B to read as follows:

§ 55.13 Inapplicability of 8-step decisionmaking process to certain categories of proposed actions.

The decisionmaking process in § 55.20 shall not apply to the following categories of proposed actions:

(a) HUD's mortgage insurance actions and other financial assistance for the purchasing, mortgaging, or refinancing of existing one- to four-family properties in communities that are in the Regular Program of the NFIP and in good standing (i.e., not suspended from program eligibility or placed on probation under 44 CFR 59.24), where the action is not a critical action and the property is not located in a floodway, coastal high hazard area, or LiMWA;

(b) Financial assistance for minor repairs or improvements on one- to four-family properties that do not meet the thresholds for “substantial improvement” under § 55.2(b)(12);

(c) HUD or a recipient's actions involving the disposition of individual HUD or recipient held, one- to four-family properties;

(d) HUD guarantees under the Loan Guarantee Recovery Fund Program (24 CFR part 573), where any new construction or rehabilitation financed by the existing loan or mortgage has been completed prior to the filing of an application under the program, and the refinancing will

not allow further construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance;

(e) The approval of financial assistance to lease units within an existing structure located within the floodplain, but only if;

(1) The structure is located outside the floodway or coastal high hazard area, and is in a community that is in the Regular Program of the NFIP and in good standing (i.e., not suspended from program eligibility or placed on probation under 44 CFR 59.24); and

(2) The project is not a critical action.

(f) Special projects for the purpose of improving efficiency of utilities or installing renewable energy that involve the repair, rehabilitation, modernization, weatherization, or improvement of existing structures or infrastructure, do not meet the thresholds for “substantial improvement” under §55.2(b)(12), and do not include the installation of equipment below the FFRMS floodplain elevation; and

(g) The guarantee of one-to-four family mortgages under the Direct Guarantee procedure for the Section 184 Indian Housing loan guarantee program or the Section 184A Native Hawaiian Housing loan guarantee program.

19. Add § 55.14 to subpart B to read as follows:

§ 55.14 Modified 5-step decisionmaking process for certain categories of proposed actions.

The decisionmaking steps in § 55.20(b), (c), and (g) (steps 2, 3, and 7) do not apply to the following categories of proposed actions:

(a) HUD's or the recipient's actions involving the disposition of acquired multifamily housing projects or “bulk sales” of HUD-acquired (or under part 58 of recipients') one- to four-family properties in communities that are in the Regular Program of the NFIP and in good standing (i.e., not suspended from program eligibility or placed on probation under 44 CFR

59.24). For programs subject to part 58, this paragraph applies only to recipients' disposition activities that are subject to review under part 58.

(b) HUD's actions under the National Housing Act (12 U.S.C. 1701 et seq.) for the purchase or refinancing of existing multifamily housing projects, hospitals, nursing homes, assisted living facilities, board and care facilities, and intermediate care facilities, in communities that are in good standing under the NFIP.

(c) HUD's or the recipient's actions under any HUD program involving the repair, rehabilitation, modernization, weatherization, or improvement of existing multifamily housing projects, hospitals, nursing homes, assisted living facilities, board and care facilities, intermediate care facilities, and one- to four-family properties, in communities that are in the Regular Program of the NFIP and are in good standing, provided that the number of units is not increased more than 20 percent, the action does not involve a conversion from nonresidential to residential land use, the action does not meet the thresholds for "substantial improvement" under § 55.2(b)(12), and the footprint of the structure and paved areas is not increased by more than 20 percent.

(d) HUD's or the recipient's actions under any HUD program involving the repair, rehabilitation, modernization, weatherization, or improvement of existing nonresidential buildings and structures, in communities that are in the Regular Program of the NFIP and are in good standing, provided that the action does not meet the thresholds for "substantial improvement" under § 55.2(b)(12) and that the footprint of the structure and paved areas is not increased by more than 20 percent.

(e) HUD's or the recipient's actions under any HUD program involving the repair, rehabilitation, or replacement of existing nonstructural improvements including streets, curbs and gutters, where any increase of the total impervious surface area of the facility is de minimis. This provision does not include critical actions, levee systems, chemical storage facilities (including any tanks), wastewater facilities, or sewer lagoons.

Subpart C – Procedures for Making Determinations on Floodplain Management and Protection of Wetlands

20. Add 55.16 to subpart C to read as follows:

§ 55.16 Applicability of subpart C decisionmaking process.

The following table indicates the applicability, by location and type of action, of the decisionmaking process for implementing Executive Order 11988 and Executive Order 11990 under subpart C of this part.

Table 1 to § 55.16

Type of proposed action (new reviewable action or an amendment)¹	Floodways	Coastal high hazard and LiMWA areas	Wetlands or FFRMS floodplain outside coastal high hazard area, LiMWA area, and floodways
Critical actions as defined in § 55.2(b)(3)	Critical actions not allowed.	Critical actions not allowed.	Allowed if the proposed critical action is processed under § 55.20. ²
Noncritical actions not excluded under § 55.12 or 55.13	Allowed only if the proposed noncritical action is not prohibited under § 55.8(a)(1) and is processed under § 55.20. ²	Allowed only if the proposed noncritical action is processed under § 55.20 ² and is (1) a functionally dependent use, (2) existing construction (including improvements), or (3) reconstruction following destruction caused by a disaster. If the action is not a functionally dependent use, the action must be designed for location in a coastal high hazard area under § 55.8(a)(3).	Allowed if proposed noncritical action is processed under § 55.20. ²

¹ Under Executive Order 11990, the decisionmaking process in § 55.20 only applies to Federal assistance for new construction in wetlands locations.

² Or those paragraphs of § 55.20 that are applicable to an action listed in § 55.14.

21. Amend § 55.20 as follows:

a. Revise the undesignated introductory paragraph, paragraph (a), the introductory text to paragraph (b), paragraphs (b)(1) and (2), the introductory text of paragraph (c), paragraphs (c)(1)(i) and (ii), paragraphs (c)(2), (c)(2)(iii), and (c)(3), the introductory text of paragraph (d), paragraphs (d)(1), (d)(2), (d)(2)(i), and (e), the introductory text of paragraph (f), paragraphs (g)(1) and (f)(2)(ii);

b. Amend paragraph (b)(3) by removing the word “HUD” from the last sentence and adding, in its place, the word “HUD’s”; and

c. Add paragraphs (b)(4) and (f)(2)(iii).

The revisions and additions read as follows:

§ 55.20 Decisionmaking process.

Except for actions covered by § 55.14, the decisionmaking process for compliance with this part contains eight steps, including public notices and an examination of practicable alternatives when addressing floodplains and wetlands. Third parties may provide analysis and information to support the decisionmaking process; however, final determinations for each step, authorization of public notices, and receipt of public comments, are the responsibility of HUD or the responsible entity. The steps to be followed in the decisionmaking process are as follows:

(a) *Step 1.* Using the processes described in §§ 55.7 and 55.9, determine whether the proposed action is located in the FFRMS floodplain, or results in new construction in a wetland. If the action does not occur in the FFRMS floodplain or include new construction in a wetland, then no further compliance with this part is required. Where the proposed action would be located in the FFRMS floodplain and includes construction in a wetland, these impacts should be evaluated together in a single 8-step decisionmaking process. In such a case, the wetland will be considered among the primary natural and beneficial functions and values of the floodplain. For

purposes of this section, an “action” includes areas required for ingress and egress, even if they are not within the site boundary, and other integral components of the proposed action, even if they are not within the site boundary.

(b) *Step 2.* Notify the public and agencies responsible for floodplain management or wetlands protection at the earliest possible time of a proposal to consider an action in a FFRMS floodplain or wetland and involve the affected and interested public and agencies in the decisionmaking process.

(1) The public notices required by paragraphs (b) and (g) of this section may be combined with other project notices wherever appropriate. Notices required under this part must be bilingual or multilingual, as appropriate, if the affected public has Limited English Proficiency. In addition, all notices must be published in a newspaper of general circulation in the affected community or on an appropriate government website that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency, and must be sent to Federal, State, and local public agencies, organizations, and, where not otherwise covered, individuals known to be interested in the proposed action.

(2) A minimum of 15 calendar days shall be allowed for comment on the public notice. The first day of a time period begins at 12:01 a.m. local time on the day following the publication or the mailing and posting date of the notice which initiates the time period.

* * * * *

(4) When the proposed activity is located in or affects a community with environmental justice concerns under Executive Order 12898, public comment and decisionmaking under this part shall be coordinated with consultation and decisionmaking under HUD policies implementing 24 CFR 58.5(j) or 50.4(l).

(c) *Step 3.* Identify and evaluate practicable alternatives to locating the proposed action in the FFRMS floodplain or wetland.

(1) * * *

(i) Locations outside and not affecting the FFRMS floodplain or wetland;

(ii) Alternative methods to serve the identical project objective, including but not limited to design alternatives such as repositioning or reconfiguring proposed siting of structures and improvements to avoid floodplain and wetland impacts; and

* * * * *

(2) Practicability of alternatives should be addressed in light of the goals identified in the project description related to the following:

* * * * *

(iii) Economic values such as the cost of space, construction, services, relocation, potential property losses from flooding, and cost of flood insurance.

(3) For multifamily and healthcare projects involving HUD mortgage insurance that are initiated by third parties, HUD in its consideration of practicable alternatives is not required to consider alternative sites, but must include consideration of:

(i) A determination to approve the request without modification;

(ii) A determination to approve the request with modification; and

(iii) A determination not to approve the request.

(d) *Step 4.* Identify and evaluate the potential direct and indirect impacts associated with the occupancy or modification of the FFRMS floodplain or the wetland and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action, including impacts related to future climate-related flood levels, sea level rise, and the related increased value of beneficial floodplain and wetland functions.

(1) *Floodplain evaluation:* The floodplain evaluation for the proposed action must evaluate floodplain characteristics (both existing and as proposed for modification by the project) to determine potential adverse impacts to lives, property, and natural and beneficial floodplain values as compared with alternatives identified in Step 3.

(i) Floodplain characteristics include:

(A) Identification of portions of the site that are subject to flood risk, documented through mapping and, as required by § 55.7(e) or commensurate with the scale of the project and available resources as permitted by § 55.7(f), climate-informed analysis of factors including development patterns, streamflow, and hydrologic and hydraulic modeling;

(B) Topographic information that can inform flooding patterns and distance to flood sources, as described in flood mapping, Flood Insurance Studies, and other data sources; and

(C) Public safety communications and data related to flood risk including available information on structures such as dams, levees, or other flood protection infrastructure located in proximity to the site.

(ii) Impacts to lives and property include:

(A) Potential loss of life, injury, or hardship to residents of the subject property during a flood event;

(B) Damage to the subject property during a flood event;

(C) Damage to surrounding properties from increased runoff or reduction in floodplain function during a flood event due to modification of the subject site;

(D) Health impacts due to exposure to toxic substance releases that may be caused or exacerbated by flood events; and

(E) Damage to a community as a result of project failure (e.g., failure of stormwater management infrastructure due to scouring).

(iii) Impacts to natural and beneficial values include changes to:

(A) Water resources such as natural moderation of floods, water quality maintenance, and groundwater recharge;

(B) Living resources such as flora and fauna (If the project requires consultation under 24 CFR 50.4(e) or 58.5(e), consultation with the U.S. Fish and Wildlife Service or National Marine Fisheries Service must include a description of impacts evaluated under this part);

(C) Cultural resources such as archaeological, historic, aesthetic, and recreational aspects;
and

(D) Agricultural, aquacultural, and forestry resources.

(2) *Wetland evaluation*: In accordance with Section 5 of Executive Order 11990, the decisionmaker shall consider factors relevant to a proposal's effect on the survival and quality of the wetland. Factors that must be evaluated include, but are not limited to:

(i) Public health, safety, and welfare, including water supply, quality, recharge, and discharge; pollution; flood and storm hazards and hazard protection; and sediment and erosion, including the impact of increased quantity or velocity of stormwater runoff on, or to areas outside of, the proposed site;

* * * * *

(e) *Step 5*. Where practicable, design or modify the proposed action to minimize the potential adverse impacts to and from the FFRMS floodplain or wetland and to restore and preserve their natural and beneficial functions and values.

(1) *Elevation*. For actions in the FFRMS floodplain, the required elevation described in this section must be documented on an Elevation Certificate or a Floodproofing Certificate in the Environmental Review Record prior to construction, or by such other means as HUD may from time to time direct, provided that notwithstanding any language to the contrary, the minimum elevation or floodproofing requirement for new construction or substantial improvement actions shall be the elevation of the FFRMS floodplain as defined in this section.

(i) If a residential structure undergoing new construction or substantial improvement is located in the FFRMS floodplain, the lowest floor or FEMA-approved equivalent must be designed using the elevation of the FFRMS floodplain as the baseline standard for elevation, except where higher elevations are required by Tribal, State, or locally adopted code or standards, in which case those higher elevations apply. Where non-elevation standards such as setbacks or other flood risk reduction standards that have been issued to identify, communicate,

or reduce the risks and costs of floods are required by Tribal, state, or locally adopted code or standards, those standards shall apply in addition to the FFRMS baseline elevation standard.

(ii) New construction and substantial improvement of non-residential structures, or residential structures that have no dwelling units and no residents below the FFRMS floodplain and that are not critical actions as defined at § 55.2(b)(3), shall be designed either:

(A) With the lowest floor, including basement, elevated to or above the elevation of the FFRMS floodplain; or

(B) With the structure floodproofed at least up to the elevation of the FFRMS floodplain. Floodproofing standards are as stated in FEMA's regulations at 44 CFR 60.3(c)(3)(ii) and 60.3(c)(4)(i), or such other regulatory standard as FEMA may issue, and applicable guidance, except that where the standard refers to base flood level, floodproofing is required at or above the FFRMS floodplain, as defined in this part.

(iii) The term "lowest floor" must be applied consistent with FEMA regulations in 44 CFR 59.1 and FEMA's Elevation Certificate guidance or other applicable current FEMA guidance.

(2) *Minimization.* Minimization requires HUD or the responsible entity to reduce harm to the smallest possible degree. Potential harm to or within the floodplain and/or wetland must be reduced to the smallest possible amount. E.O. 11988's requirement to minimize potential harm applies to (1) the investment at risk, or the flood loss potential of the action itself, (2) the impact the action may have on others, and (3) the impact the action may have on floodplain and wetland values. The record must include a discussion of all minimization techniques that will be incorporated into project designs as well as those that were considered but not approved. Minimization techniques for floodplain and wetlands purposes include, but are not limited to:

(i) *Stormwater management and green infrastructure:* the use of permeable surfaces; natural landscape enhancements that maintain or restore natural hydrology through infiltration, native plant species, bioswales, rain gardens, or evapotranspiration; stormwater capture and

reuse; green or vegetative roofs with drainage provisions; WaterSense products; rain barrels and grey water diversion systems; protective gates or angled safety grates for culverts and stormwater drains; and other low impact development and green infrastructure strategies, technologies, and techniques. Where possible, use natural systems, ecosystem processes, and nature-based approaches when developing alternatives for consideration.

(ii) *Adjusting project footprint*: evaluate options to relocate or redesign structures, amenities, and infrastructure to minimize the amount of impermeable surfaces and other impacts in the FFRMS floodplain or wetland. This may include changes such as designing structures to be taller and narrower or avoiding tree clearing to reduce potential erosion from flooding.

(iii) *Resilient building standards*: consider implementing resilient building codes or standards to ensure a reliable and consistent level of safety.

(3) *Restoration and preservation*. Restore means to reestablish a setting or environment in which the natural and beneficial values of floodplains and wetlands could again function. Where floodplain and wetland values have been degraded by past actions, restoration is informed by evaluation of the impacts of such actions on beneficial values of the floodplain or wetland, and identification, evaluation, and implementation of practicable measures to restore the values diminished or lost. Preserve means to prevent modification to the natural floodplain or wetland environment, or to maintain it as closely as possible to its natural state. If an action will result in harm to or within the floodplain or wetland, HUD or the responsible entity must ensure that the action is designed or modified to assure that it will be carried out in a manner which preserves as much of the natural and beneficial floodplain and values as is possible. Restoration and preservation techniques for floodplain and wetlands purposes include, but are not limited to:

(i) Natural Resource Conservation Service or other conservation easements;

(ii) Appropriate and practicable compensatory mitigation is required for unavoidable adverse impacts to more than one acre of wetlands. Compensatory mitigation includes but is not limited to: permittee-responsible mitigation, mitigation banking, in-lieu fee mitigation, the use of

preservation easements or protective covenants, and any form of mitigation promoted by State or Federal agencies. The use of compensatory mitigation may not substitute for the requirement to avoid and minimize impacts to the maximum extent practicable.

(4) *Planning for residents' and occupants' safety.* (i) For multifamily residential properties, an evacuation plan must be developed that includes safe egress route(s) out of the FFRMS floodplain, plans for evacuating residents with special needs, and clear communication of the evacuation plan and safety resources for residents.

(ii) For healthcare facilities, evacuation route(s) out of the FFRMS floodplain must be identified and clearly communicated to all residents and employees. Such actions must include a plan for emergency evacuation and relocation to a facility of like capacity that is equipped to provide required critical needs-related care and services at a level similar to the originating facility.

(iii) All critical actions in the FFRMS floodplain must operate and maintain an early warning system that serves all facility occupants.

(f) *Step 6.* HUD or the responsible entity shall consider the totality of the previous steps and the criteria in this subsection to make a decision as to whether to approve, approve with modifications, or reject the proposed action. Adverse impacts to floodplains and wetlands must be avoided if there is a practicable alternative. This analysis must consider:

* * * * *

(2) * * *

(ii) A reevaluation of alternatives under this step should include a discussion of economic costs. For floodplains, the cost estimates should include savings or the costs of flood insurance, where applicable; flood proofing; replacement of services or functions of critical actions that might be lost; and elevation to at least the elevation of the FFRMS floodplain, as appropriate based on the applicable source under § 55.7. For wetlands, the cost estimates should include the cost of filling the wetlands and mitigation.

(iii) If the proposed activity is located in or affects a community with environmental justice concerns under E.O. 12898, the reevaluation must address public input provided during environmental justice outreach (if conducted) and must document the ways in which the activity, in light of information analyzed, mitigation measures applied, and alternatives selected, serves to reduce any historical environmental disparities related to flood risk or wetlands impacts in the community.

(g) * * *

(1) If the reevaluation results in a determination that there is no practicable alternative to locating the proposal in the FFRMS floodplain or the wetland, publish a final notice that includes:

* * * * *

22. Revise § 55.21 to read as follows:

§ 55.21 Alternate processing for existing nonconforming sites.

Notwithstanding the limitations on HUD assistance defined in § 55.8, in exceptional circumstances, the Assistant Secretary for Community Planning and Development may approve HUD assistance or insurance to improve an existing property with ongoing HUD assistance or mortgage insurance if the following conditions are satisfied:

(a) HUD completes an environmental review pursuant to part 50, including the 8-step decisionmaking process pursuant to § 55.20, that:

(1) Documents that it is not practicable to transfer the HUD assistance to a site with lower flood risk under existing program rules, financial limitations, and site availability; and

(2) Mandates measures to ensure that the elevated flood risk is the only environmental hazard or impact that does not comply, or that requires mitigation to comply with HUD's environmental requirements at 24 CFR Parts 50, 51, 55, and 58; and

(b) The proposed project incorporates all practicable measures to meaningfully reduce flood risk and increase the overall resilience of the site, including but not limited to elevation or

floodproofing of all structures in the FFRMS floodplain, removing all residential units from the floodway, identification of evacuation route(s) out of the FFRMS floodplain, and other measures to minimize flood risk and preserve the function of the floodplain and any impacted wetlands as described in § 55.20(e).

§§ 55.22, 55.24 and 55.25 [Removed and Reserved]

23. Remove and reserve §§ 55.22, 55.24, and 55.25.

24. In § 55.26, revise the introductory text and paragraphs (b)(1) and (c) to read as follows:

§ 55.26 Adoption of another agency's review under the Executive Orders.

If a proposed action covered under this part is already covered in a prior review performed under Executive Order 11988 or Executive Order 11990 by another agency, including HUD or a different responsible entity, that review may be adopted by HUD or by a responsible entity authorized under 24 CFR part 58 without further public notice, provided that:

* * * *

(b) * *

(1) The action currently proposed has not substantially changed in project description, scope, and magnitude from the action previously reviewed by the other agency; and

* * *

(c) HUD assistance must be conditioned on mitigation measures prescribed in the previous review.

§ § 55.27 and 55.28 [Removed and Reserved]

25. Remove and reserve §§ 55.27 and 55.28.

PART 58 - ENVIRONMENTAL REVIEW PROCEDURES FOR ASSUMING HUD

ENVIRONMENTAL REVIEW RESPONSIBILITIES

26. The authority citation for part 58 continues to read as follows:

Authority: 12 U.S.C. 1707 note, 1715z– 13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4321–4335, 4852, 5304(g), 12838, and 12905(h); title II of Pub. L. 105–276; E.O. 11514 as amended by E.O. 11991, 3 CFR, 1977 Comp., p. 123.

27. Revise § 58.5(b)(1) as follows:

§ 58.5 Related Federal laws and authorities.

* * * * *

(b) * * *

(1) Executive Order 11988, Floodplain Management, as amended by Executive Order 13690, February 4, 2015 (80 FR 6425), 3 CFR, 2015 Comp., p. 6425, as interpreted in HUD regulations at 24 CFR part 55.

* * * * *

§ 58.43 [Amended]

28. In § 58.43(a):

a. Remove “tribal, local, State and Federal agencies;” and add in its place “Tribal, Federal, State and local agencies”; and

b. Add “or on an appropriate Government website that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency” between “affected community” and the period ending the sentence.

§ 58.45 [Amended]

29. In § 58.45, paragraphs (a), (b), and (c), add “in a general circulation newspaper or on a Government website that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency” after “published”.

§ 58.59 [Amended]

30. In the introductory text of paragraph (b), add “or on an appropriate Government website that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency” after “news media”.

PART 200—INTRODUCTION TO FHA PROGRAMS

31. The authority citation for part 200 continues to read:

Authority: 12 U.S.C. 1702-1715z-21; 42 U.S.C. 3535(d).

32. In § 200.926, add paragraph (a)(3) to read as follows:

§ 200.926 Minimum property standards for one and two family dwellings.

(a) * * *

(3) Applicability of standards to substantial improvement. The standards in § 200.926d(c)(4)(i)-(iii) are also applicable to structures that are approved for insurance or other benefits in connection with substantial improvement, as defined in § 55.2(b)(12) of this title.

* * * * *

33. In § 200.926d, revise paragraphs (c)(4)(i) through (iii), remove paragraph (c)(4)(iv), and redesignate paragraphs (c)(4)(v) and (c)(4)(vi) as paragraphs (c)(4)(iv) and (c)(4)(v), respectively. The revisions read as follows:

§ 200.926d Construction requirements.

* * * * *

(c) * * *

(4) *Drainage and flood hazard exposure -*

(i) *Residential structures located in Special Flood Hazard Areas.* The elevation of the lowest floor (including basements and other permanent enclosures) shall be at least two feet above the base flood elevation (see 24 CFR 55.8(b) for appropriate data sources).

(ii) *Residential structures located in FEMA-designated “coastal high hazard areas”.*

Where FEMA has determined the base flood level without establishing stillwater elevations, the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) and its horizontal supports shall be at least two feet above the base flood elevation.

(iii) (A) In all cases in which a Direct Endorsement (DE) mortgagee or a Lender Insurance (LI) mortgagee seeks to insure a mortgage on a one- to four-family dwelling that is newly constructed or which undergoes a substantial improvement, as defined in § 55.2(b)(12) of this title (including a manufactured home that is newly erected or undergoes a substantial improvement) that was processed by the DE or LI mortgagee, the DE or LI mortgagee must determine whether the property improvements (dwelling and related structures/equipment essential to the value of the property and subject to flood damage) are located on a site that is within a Special Flood Hazard Area, as designated on maps of the Federal Emergency Management Agency. If so, the DE mortgagee, before submitting the application for insurance to HUD, or the LI mortgagee, before submitting all the required data regarding the mortgage to HUD, must obtain:

(1) A final Letter of Map Amendment (LOMA);

(2) A final Letter of Map Revision (LOMR); or

(3) A signed Elevation Certificate documenting that the lowest floor (including basements and other permanent enclosures) of the property improvements is at least two feet above the base flood elevation as determined by FEMA’s best available information.

(B) Under the DE program, these mortgages are not eligible for insurance unless the DE mortgagee submits the LOMA, LOMR, or Elevation Certificate to HUD with the mortgagee’s request for endorsement.

(iv) *Streets*. Streets must be usable during runoff equivalent to a 10-year return frequency. Where drainage outfall is inadequate to prevent runoff equivalent to a 10-year return frequency from ponding over 6 inches deep, streets must be made passable for commonly used emergency vehicles during runoff equivalent to a 25-year return frequency, except where an alternative access street not subject to such ponding is available.

(v) *Crawl spaces*. Crawl spaces must not pond water or be subject to prolonged dampness.

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Adrianne Todman,
Deputy Secretary.

[BILLING CODE 4210-67]

[FR Doc. 2023-05699 Filed: 3/23/2023 8:45 am; Publication Date: 3/24/2023]